



# 2016 WHITE BOOK

TRADE & INVESTMENT POLICY RECOMMENDATIONS



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## **ABOUT EUROCHAM**

EuroCham Cambodia was inaugurated on June 2nd, 2011 with the support of three founding European Business Organizations: the Chambre de Commerce Franco-Cambodgienne (CCFC), the British Business Association in Cambodia (BBAC) and the German Business Group, Arbeitskreis Deutsche Wirtschaft (ADW). EuroCham was

established with the objectives of promoting the interests of European businesses operating in Cambodia, facilitating the entry of European companies into the market and creating an extensive support network among corporate and individual members.

**THE EUROPEAN CHAMBER OF COMMERCE IN CAMBODIA IS GRATEFUL TO OUR CONTRIBUTING MEMBER COMPANIES FOR THEIR INPUTS AND SUPPORT IN MAKING THIS FIRST EDITION OF THE WHITE BOOK POSSIBLE.**

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The White Book 2016 is a collective expression of the views of EuroCham member companies on specific aspects of the business environment in Cambodia. The information and views put forward in this publication are solely intended to promote constructive dialogue and offer suggestions for the improvement of Cambodian–European business relations. EuroCham has made all efforts to ensure that the information contained in the White Book 2016 is accurate at press time to the best of our knowledge and belief. However, EuroCham does not assume and it hereby disclaims any liability or responsibility to any party for the contents of the White Book 2016 and/or the outcome of any decision as a result of this publication.

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# *Message from the Chairman*

**O**n behalf of the EuroCham Cambodia Board of Directors and our members, I am pleased to present the Chamber's first White Book, an annual publication that constructively engages the Royal Government on legal, regulatory and administrative issues most important to advancing the ease of doing business in Cambodia and attracting more foreign and European investment to the Kingdom.

While the EU grants Cambodia preferential trade access (through the Everything But Arms arrangement) and represents the Kingdom's most important export market, Europe accounts for less than 5% of foreign investment in Cambodia even though it is the largest source of foreign investment in the ASEAN region as a whole. Although an outdated European perception of Cambodia is partly responsible for this, and acknowledging that **the Royal Government has indeed begun to improve its business landscape**, there are some specific, practical steps that it can take to make its marketplace even more attractive to compliant foreign investors.

**This White Book presents EuroCham's 2016 proposals to assist the Royal Government in improving the ease of doing business in Cambodia.**

As a set of policy proposals, this White Book constructively addresses every issue identified by our members and we believe that it represents the perception and aspirations of **compliant investors** in Cambodia. In September and October 2015, we surveyed our members for the first annual EuroCham Business Confidence Survey and our final body of recommendations in this White Book are indeed reflective of the survey's findings. On the positive side, a majority of companies surveyed reported that they had been able to meet their financial targets over the past 12 months. Most significantly, a full 81% stated that they intend to invest further in Cambodia over the coming year. However, assessments of Cambodia's overall competitiveness compared to other ASEAN investment destinations were underwhelming with only 13% considering present-day Cambodia to be more competitive than most other Southeast Asian countries.

Likewise, the inputs that we received for the White Book entailed similar core themes. Throughout each chapter, the need for more **formalization** of the business environment is apparent. Where regulation is lacking, ambiguous, or simply not enforced, this creates opportunities for unfair competition—the single most cited deterrent to expanded European investment in the Kingdom. We understand that the Royal Government

recognizes unfair competition as an impediment to foreign investment and is committed to an ongoing agenda of ambitious reforms aimed at improving compliance by all companies. It is our hope that this White Book can serve to emphasize specific regulatory issues in need of further attention and strengthen Cambodia's economy in the process.

Another recurrent theme throughout the White Book are bureaucratic procedures in need of **simplification**. While Cambodia overall does not have excessively burdensome bureaucratic requirements compared to other countries in the region, certain provisions applied within the Kingdom can impose significant cost and operational strain upon compliant companies. Consistent to our strategy of constructive engagement, this White Book highlights those procedures and offers suggestions in how they can be revised in a more streamlined and efficient fashion.

Finally, in undertaking the perceived difficulties in obtaining information and clarification on laws, several of our recommendations address the modes of **communication between public and private sector**. Our research has identified specific subject areas and sectors we feel would benefit from increased dialogue with the business community—dialogue that would foster shared perspectives and

encourage real solutions to issues affecting the private sector.

As the largest Western business association in Cambodia, EuroCham is aware of the matters that affect the daily business of our members as well as the concerns that prevent new investment from flowing into this growing and fast changing country. As such, we are willing to work hand in hand with the Royal Government to identify and address these issues on a basis of mutual trust, patience and result-oriented realism.

I would like to take this opportunity to thank all members and stakeholders who took the time to contribute to this important project. I encourage all of our members to continue participating in our Sectorial Committees; over the coming months, these committees will further engage the Royal Government in finding constructive solutions on the issues presented in this White Book, ultimately advancing greater levels of trade and investment between Cambodia and the EU.

**Emmanuel Menanteau**

# Methodology

This first edition of the White Book is structured around EuroCham's eight existing Sectorial Committees whose active members have been extensively consulted for inputs and feedback, both collectively and individually.

The first three chapters therefore focus on cross-sectorial topics that impact all companies doing business in the Kingdom, namely Human Resources, Taxation, and Transport & Logistics (with comments on Customs and import-export processes). The remaining five chapters address specific issues affecting the Automotive, Digital and New Technologies, Green Business, Healthcare, and Real Estate and Construction sectors. We've also dedicated an additional section to the Government-Private Sector Forum Working Group on Tourism, whose Secretariat is jointly ensured by the General Department of the Ministry of Tourism and EuroCham.

Since our intention is to serve as a constructive partner to the Royal Government, every issue raised comes with a realistic solution that could be implemented by the concerned authorities within the short to medium-term. As such, our recommendations take the following format:

*Issue Description* Details the present-day situation and how it impacts our members.

*Potential gains/concerns for Cambodia* Illustrates how it is in the interest of the Royal Government to address the issue.

*Recommendations* Presents specific actions that could improve the situation for all parties.

We are confident that these recommendations reflect the views of compliant investors in Cambodia and we remain committed to ongoing dialogue with the Royal Government in achieving an increasingly attractive Cambodian business landscape.

# Policy Recommendations Table

An overview of the White Book's proposals.

## HUMAN RESOURCES

- |  |   |
|--|---|
| 1. SUPPORTING ECONOMIC DIVERSIFICATION | ✓ Support greater proliferation of collective bargaining agreements to interpret the Labor Law at an industry level.  |
| 2. WORK PERMITS FOR FOREIGN EMPLOYEES  | ✓ Remove the requirement for employers to complete a pre-defined contractual template when registering the employment contract of foreigners at the Ministry of Labour and Vocational Training.<br>✓ Introduce a process to allow individuals working in Cambodia but without a regular employer to apply for their own work permits. |
| 3. ENTERPRISE INFIRMARIES              | ✓ Revise requirements for businesses employing 50+ employees to have their own on-site infirmaries.   |
| 4. SKILLS AND TRAINING                 | ✓ Prioritize the implementation of a national qualifications framework that incorporates vocational education and training programs.<br>✓ Ensure that this framework includes skills developed through non-formal learning and informal learning.   |
| 5. PUBLIC-PRIVATE SECTOR COMMUNICATION | ✓ Provide easier access to English-language information about Labor Law regulations and responsible persons with the Ministry of Labor and Vocational Training.   |

## TAXATION

- |                                   |   |
|-----------------------------------|---|
| 6. TAX REGISTRATION               | ✓ Formally revise the requirement for the Chairman of a company to physically present at the GDT for tax registration purposes.<br>✓ Revise requirements for lessees to provide immovable property tax receipts for their registered office when registering a company.   |
| 7. WITHHOLDING TAXES              | ✓ Reconsider the principle of withholding tax on services which unfairly penalizes tax-compliant companies.<br>✓ Stop the practice of charging both withholding tax and VAT on properties rented from companies   |
| 8. VALUE ADDED TAX                | ✓ Provide more specific guidance on VAT requirements for exported services.<br>✓ Permit business making both taxable and non-taxable supplies to offset 100% of their Input Tax paid against Output Tax collected.<br>✓ Reiterate the timeframe within which VAT refund applications should be processed and emphasize the importance of this timeframe being followed. |
| 9. TAX ON PROFITS AND MINIMUM TAX | ✓ Consider revising Cambodia's QIP incentives relating to Tax on Profit so as to offer more competitive tax advantages to investors.<br>✓ Consider revising Minimum Tax requirements for businesses with lower profit margins.<br>✓ Introduce a capped allowance for tax-deductible entertainment expenses.   |
| 10. TAX ADMINISTRATION            | ✓ Revise punitive measures for incorrect invoicing set out in the GDT's Instruction 1127.   |

## **CUSTOMS, TRANSPORT and LOGISTICS**

11. CUSTOMS
- ✓ Expand the List of Fees and Charges to include out-of-hours services and reasonable expenses for Customs officials.
  - ✓ Provide clearer guidelines on the process through which suppliers to QIPs can benefit from import tariff exemptions applicable to the QIP, particularly where the market price is different to the Master List price.
  - ✓ Prioritize the implementation of a secure online payment system and expansion of online document capabilities for Customs.
- 
12. TRANSPORT AND LOGISTICS
- ✓ Reduce the high cost of international shipping to and from Cambodia.
  - ✓ Permit companies other than KAMSAB to offer shipping agency services for marine cargo.
  - ✓ Assist shipping lines in recovering containers holding abandoned cargo.
- 
13. SPECIAL ECONOMIC ZONES
- ✓ Require SEZs to facilitate regular meetings between investors, GDCE, and other relevant public bodies and consider trialing new tools for public-private collaboration within SEZs.

## **AUTOMOTIVE**

14. IMPORT REGULATIONS
- ✓ Implement regulatory measures to prevent the import of cars unsuitable for the Cambodian environment.
- 
15. CONSUMER PROTECTION
- ✓ Require the Department of Land Transport to notify authorized distributors, on a quarterly basis, of the contact information for all new vehicle registrations or used-vehicle transfers for product recall purposes.
  - ✓ Better implement existing technical check requirements.
- 
16. TAXATION POLICY
- ✓ Rationalize taxation policy for automobiles so as to support the growth of the formal sector.

## **DIGITAL and NEW TECHNOLOGIES**

17. SUPPORTING NEW TECHNOLOGY INDUSTRIES
- ✓ Review the current format for public-private sector consultation within ICT.
- 
18. E-COMMERCE
- ✓ Engage the Cambodia eBusiness Working Group to support the growth of e-commerce.
- 
19. TELECOMMUNICATIONS
- ✓ Engage in substantive consultation with the private sector prior to implementation of the telecommunications re-licensing process.
  - ✓ Structure a future Universal Service Obligation scheme to support the growth of the sector.
  - ✓ Introduce a screening process for bidders on future spectrum auctions.
  - ✓ Review the method of calculating taxable revenues for telecommunications companies.

## GREEN BUSINESS

20. RENEWABLE ENERGIES
- ✓ Assist sustainable biomass companies operating in the formal sector to be price competitive.
  - ✓ Consider VAT exemptions and a trial net-metering scheme to support the development of the solar industry in Cambodia.
  - ✓ Endorse the Good Solar Initiative as a national quality assurance program for solar energy and create a transition plan to eventually assume responsibility for management of the program.
- 
21. ENVIRONMENTAL IMPACT ASSESSMENT
- ✓ Provide clear and public guidance on how EIA legislation will be enforced until the Environmental Code and/or new EIA law are signed and implemented.
  - ✓ Remove the nationality requirement for EIA consultancies from future EIA legislation.
- 
22. ENERGY EFFICIENCY
- ✓ Initiate a mandatory energy efficiency labeling system for certain products sold in Cambodia.
  - ✓ Consider introducing a 'Green Industry Award' to recognize businesses who have demonstrated excellent practices in energy efficiency.
- 
23. GREEN BUILDINGS
- ✓ Begin exploring the creation of a Cambodian Green Building Council.

## HEALTHCARE

24. PARALLEL IMPORTS
- ✓ Implement additional measures to prevent parallel importing of pharmaceutical products.
- 
25. REGISTRATIONS AND RENEWALS
- ✓ Introduce a process for obtaining exceptional import licenses for products that have an ongoing registration or renewal application.
  - ✓ Publish a list of countries or institutions from which laboratory tests of healthcare products can be accepted in lieu of laboratory testing within Cambodia.
  - ✓ Publish a clear schedule of sittings of the Ministry of Health's registration and renewal committee.
  - ✓ Define a clear list of product categories for medical equipment with details of the procedures and documents required for each.
- 
26. OVER-THE-COUNTER PRODUCTS
- ✓ Review and update the OTC list so as to align with the classification systems of other ASEAN countries.
- 
27. PUBLIC TENDERS
- ✓ Exclude companies that do not have the capacity to provide ongoing aftermarket care on medical equipment from public tenders.
- 
28. PUBLIC-PRIVATE SECTOR COMMUNICATION
- ✓ Introduce a formalized public-private sector forum for healthcare and improve availability of legal information in English language on the Ministry of Health website.

## REAL ESTATE *and* CONSTRUCTION

29. CADASTRAL AND REAL ESTATE DEVELOPMENT
- ✓ Define a set of fiscal controls during project development.
  - ✓ Place an obligation upon developers to apply for freehold strata titles on behalf of property purchasers.
  - ✓ Introduce financial controls that limit the speculative buying of property within Cambodia.
  - ✓ Officially prescribe of a universal standard of measurement.
- 
30. LAND MANAGEMENT AND URBAN PLANNING
- ✓ Consider permitting a 'model project' to showcase to prospective investors that coastal development under international standards is a viable possibility within Cambodia.
- 
31. CONSTRUCTION
- ✓ Consult with the private sector to ensure a practical set of building standards.
  - ✓ Implement short-term measures to address fire safety prior to passing the Building Code.

# *Tourism and Hospitality*

## *Public-Private Consultations*

The current White Book is a compilation of policy recommendations formulated by all EuroCham Sectorial Committees with one notable exception: Tourism.

As a matter of fact, EuroCham has already handed over a list of obstacles to the ease of doing business in the tourism industry (along with their proposed solutions) to the Minister of Tourism as part of the **Government-Private Sector Forum Working Group B** dedicated to Tourism. These issues and solutions are currently being discussed by the tourism industry and the Ministry of Tourism and therefore do not need to be addressed again in this White Book. The public-private consultation mechanisms that enable this as well as EuroCham's role in this process are described below.

The Government Private Sector Forum (G-PSF) was established in 1999 at the initiative of the Prime Minister of Cambodia, with the purpose of providing **a reliable dialogue mechanism between the Royal Government and the private sector** for consultations on trade and investment related issues. Organized around a series of thematic Working Groups—each one co-chaired by a Minister of the Royal Government and an elected representative of the private sector—the G-PSF provides an officially sanctioned platform for the business community to collectively raise problems and propose solutions to their Royal Government counterparts. Issues that cannot be solved at the Ministerial level are transmitted to the G-PSF Plenary Session which normally meets once a year and is chaired by the Prime Minister himself.

The Council for the Development of Cambodia (CDC) acts as the secretariat of the G-PSF while the Cambodia Chamber of Commerce ensures the coordination of the various Working Groups.

Presently, 10 Working Groups meet regularly throughout the year:

- A. Working Group on Agriculture & Agro-industry
- B. Working Group on Tourism
- C. Working Group on Manufacturing and Small and Medium Enterprises and Services
- D. Working Group on Law, Tax and Governance
- E. Working Group on Banking and Financial Services
- F. Working Group on Transport and Infrastructure
- G. Working Group on Export Processing and Trade Facilitation
- H. Working Group on Industrial Relations
- I. Working Group on Unhusked Rice-Rice
- J. Working Group on Power and Mining Resources

On August 3rd 2015, EuroCham successfully nominated the Chairman of our Tourism Committee, renowned Cambodian Master Chef Luu Meng, to be elected as Co-Chairman of the **Working Group on Tourism** (Working Group B). Consequently, EuroCham was entrusted with ensuring the Secretariat of this Private Sector Working Group, and subsequently invited the Cambodia Tourism Federation to join in coordination of the group, giving it access to a wider network of tourism and hospitality businesses.

Following his election as Co-Chair of the Private Sector Working Group on Tourism, Chef Luu Meng requested EuroCham and the Cambodia Tourism Federation to call upon all members of the tourism and hospitality industry in order to identify current challenges affecting the ease of doing business and to propose constructive solutions with the view of submitting it to the Minister of Tourism, Co-Chair for the Royal Government.

On 3 September 2015, a comprehensive matrix of issues and proposed solutions was officially submitted by the Private Sector to H. E. Mr. THONG Khon, Minister of Tourism, on the occasion of a formal Working Group B meeting held at the Ministry of Tourism.

Following this first round of consultation, the Minister of Tourism reached out to the private sector by proposing the establishment of an elaborate public-private structure comprising not only a joint-Secretariat co-chaired by the General Department of Tourism and by EuroCham but also seven thematic Task Forces. Each Task Force is co-lead by a technical representative of the Ministry of Tourism and by an industry representative designated by the Private Sector Co-Chairman. Under the coordination of the Joint Secretariat, each Task Force is assigned with reviewing the issues submitted by the Private Sector as well as other topics proposed by the Ministry of Tourism in order to agree on commonly accepted solutions that will be submitted to the Co-Chairs during the next Working Group meeting.

Established by Ministerial Decision on 5 November 2016, the seven Task Forces are the following:

1. Marketing and Dissemination
2. Cleanliness and Green
3. Tourism industry
4. Investment and Tourism products development
5. Research and Development
6. Training
7. Safety and Transportation.

Between their formal establishment in November 2015 and the finalization of this White Book in March 2016, each Task Force has met at least twice and all have committed to a work plan for the year to come.

EuroCham welcomes the timely initiative taken by the Ministry of Tourism in reaching out to the private sector and look forward to the achievements of this innovative and promising public-private consultation mechanism within the framework of G-PSF Working Group B. While the White Book acts as a basis to support public-private discussions aimed at improving the ease of doing business in Cambodia, these types of consultations are already taking place in the tourism and hospitality sector thanks to the Government Private Sector Forum (G-PSF).

Acknowledging this ongoing collaboration and keeping in mind its current duty as Secretariat of G-PSF Working Group B, EuroCham chose not to include policy recommendations for tourism and hospitality in this publication.



# **Policy Recommendations**

**for trade and investment in Cambodia**

# HUMAN RESOURCES

EuroCham has engaged with private sector representatives across a broad range of industries on the topic of human resources and issues relevant to employers in the Kingdom. We have found their recommendations to fall into three sub-categories: matters relating to laws and regulations, the need to facilitate further vocational training amongst the domestic workforce, and a desire to foster enhanced communication between the Ministry of Labour and Vocational Training and the private sector.

EuroCham's discussions with our members about the legislative and regulatory requirements placed upon employers was generally positive with most of those questioned finding the Labor Law and other applicable legislation to provide a fair and rational set of rules and obligations between employers and employees. A variety of non-critical issues relating to the interpretation and implementation of these laws were brought

up, and in most instances we found these issues to be more problematic for certain industries than for others. Accordingly, our first recommendation is to encourage the adoption of industry-level collective bargaining agreements which we believe is the most efficient method of adapting interpretation of laws so as to support economic diversification and remove ambiguity. Further recommendations requesting specific action by the Royal Government are raised relating to work permits for foreign nationals and a burdensome requirement for larger businesses to have in-house enterprise infirmaries.

On skills and human capacities, Cambodia has been described as having 'skills shortages' and 'productivity constraints'<sup>1</sup>. We welcome the ongoing efforts of the Royal Government to reform all tiers of the education system as part of Phase III of the Rectangular Strategy (2013-2018). It is recognized that this is a long-term

strategy that will take time to bear fruit and translate into greater availability of skills within the workforce. In terms of shorter-term measures, there is a need to segmentize the challenges found within the labor market. At senior management level, our members feel there is an adequate supply of suitably-qualified candidates (both Cambodian and foreign nationals). Likewise, at entry level, many companies have developed internal training programs that can equip fresh graduates with the skills necessary to succeed in their business. The biggest challenge comes in finding candidates for middle-management positions who can speak Khmer and who have sufficient technical and soft skills. Reflecting the shortage of qualified candidates for such positions, salary expectations for the small pool of suitable candidates for middle management have increased by as much as 40% over the past two years. The private sector expects to be involved in developing new skills amongst the

Cambodian workforce and seeks opportunities to engage with the Royal Government in order to coordinate training activities to maximize benefit to the national economy. Our recommendations in this sector focus on how to better facilitate private sector participation in skills development over the next couple of years.

Finally, many of our members have commented on challenges relating to their communication with the Ministry of Labour and Vocational Training and/or its municipal and provincial offices. While the legal and regulatory requirements around employment in Cambodia are, on the whole, less complicated than many regional neighbors, there can at times be a lack of mutual comprehension and there is a need for both the private sector and public officials to seek to better understand one another so as to ensure higher levels of compliance and efficiency.

# 1. SUPPORTING ECONOMIC DIVERSIFICATION

## *Provisions for industry-specific requirements*

### *Issue Description*

Amongst our members there is a broad consensus that Cambodia has a largely clear set of laws that are easy for foreign businesses to understand and, in most cases, provide a fair amount of protection to both employer and employee.

This being the case, it is very difficult for any employment law to cover the range of different scenarios and requirements that can emerge within a variety of industrial contexts. A consistent theme that has emerged from our enquiries amongst our membership is the perception that the Labor Law appears to have been written with the country's dominant garments industry in mind and the concern that stipulations that are clearly sensible when applied to the garments sector do not translate well to other industries. As a result, certain articles of the Labor Law and other applicable pieces of legislation can prove challenging or burdensome for our members to comply with as they sit uneasily with the particular context of the industries within which these businesses operate.

While it would not be productive to list every issue raised, we would nonetheless take this opportunity to mention two examples that illustrate the issue:

Example A. Article 68 of the Labor Law prescribes different maximum permissible notice periods for 'regular', 'specialised' and 'non-specialised' workers though there are no clear guidelines as to how employers should categorize employees, which creates a situation of ambiguity for both employers and employees. This is particularly problematic for higher-end hospitality companies for whom one or two months is insufficient time to be able to provide training to the employee and assess whether they are capable of meeting the professional standards required by the role.

Example B. All businesses are required to register their internal disciplinary measures with the Ministry of Labour and Vocational Training, including a list of punishable actions and prescribed disciplinary responses, which must be deemed 'proportionate' by the authorities. A client-facing services industry such as the hospitality sector will have different expectations of employees compared to, for example, an employer within low-skilled manufacturing. Accordingly, some members report to us difficulties in registering internal disciplinary measures and having them recognized as 'proportionate'.

As Cambodia seeks to diversify the economy and move towards having a greater variety of industrial sectors, there is a need for labor laws to be applied in a way that recognizes the different challenges and requirements encountered by different sectors in order to increase both efficiency and compliance.

### *Potential gains/concerns for Cambodia*

Featuring prominently in the Industrial Development Policy 2015-2025, the Royal Government has a commitment to enhancing economic diversification within the Kingdom in order to support sustained economic growth. Labor laws and other bodies of legislation should be used as a tool to ensure the fair and sustainable development of a range of sectors

within Cambodia and should not create burdensome obstacles that can deter investment. The Royal Government, and in particular the Ministry of Labor and Vocational Training, would therefore benefit from adopting measures that support application of laws in ways that are conducive to economic diversification.

The issues raised to us were varied, as are the benefits to be gained by the Royal Government and the private sector in their resolution. In Example A above, the ambiguity within Article 68 creates a need to seek further consultation outside the content of the Law itself in order to understand the Article's intent and application. It represents a hindrance to companies seeking to be fully compliant as the Article could be interpreted in a plurality of ways. If the hospitality sector could clear up this ambiguity and, furthermore, were provided sufficient time to assess a new employee and their compatibility for the role, companies within the industry would be more likely to offer long-term labor contracts to employees. They would thus be providing secure, stable and legally-compliant employment and having positive effects on the national economy.

At a top level, investors from industries that are not currently prominent in Cambodia would perceive less regulatory risk in entering Cambodia as a new market or manufacturing hub if seeing that the Royal Government is conscious of the need to account for the particular context of specific industries.

Rather than request a multitude of minor legislative changes and adjustments, we believe that it would be more efficient and beneficial if the Ministry of Labor and Vocational Training were to actively encourage greater proliferation of collective bargaining agreements (CBAs) at an industry level between employer associations and labor unions. CBAs can be an effective tool through which groups of employers and employee representatives from particular industries can agree upon an interpretation of the laws in a way that is optimal to both sides, and subsequently have these interpretations recognized by the Ministry.

Any such agreement would recognize the Labor Law as the foundation document detailing the employers' and employees' responsibilities to one another, and would respect Article 98 which states that the terms of an agreement cannot be less favorable to workers than laws and regulations already in effect. It would however recognize the different contexts under which the Law must apply within particularly industries and allow for representatives from those industries to agree upon interpretations of the Law where it is not immediately obvious how it should be applied to their sector.

In illustrating how CBAs could prove to be useful, we consider how a CBA for the hospitality sector could help employers within this sector to be compliant in a way that is unambiguous and not unnecessarily burdensome. For Example A, an agreement could be reached as to how to define 'regular', 'specialised' and 'non-specialised' workers within the industry and detail the specific skills that would qualify an individual for each category. Within Example B, employers and employees could agree upon a list of punishable actions and proportionate disciplinary measures, which could then be recognized by the Ministry.

## *Recommendations*

- ✓ Support the spread of collective bargaining agreements to interpret Labor Law at the industry level

## 2. WORK PERMITS FOR FOREIGN EMPLOYEES

### *Registration of employment contracts of foreign employees with the Ministry of Labour and Vocational Training*

#### *Issue Description*

According to Prakas 196, Article 3, owners or directors of companies employing a foreign national must register the employment contract of the foreign employee with the Department of Employment and Workforce of the Ministry of Labour and Vocational Training or its municipal/provincial departments. In practice, the Ministry requires employers to complete a template contract for each foreign employee. However, the form is somewhat simplistic and does not provide sufficient detail on areas that employers would normally expect to cover within a contract.

#### *Potential gains/concerns for Cambodia*

As the contract template required by the Ministry of Labour and Vocational Training is insufficiently detailed, employers are unable to formally register the full details of their agreements with employees. In practice, employers need to sign with employees a separate, more detailed contract which lacks formal recognition. The status quo is inefficient for both the Royal Government and employers – authorities do not have full visibility of agreements between employers and employees, while employers have no recourse to having their contractual agreements with employees recognized by the Royal Government.

#### *Recommendations*

Remove the requirement for employers to complete a pre-defined contractual template when registering the employment contract of foreigners at the Ministry of Labour and Vocational Training. Such a removal would not be incompatible with Article 3 of Prakas 196 which states simply that “The owner or director of enterprise/establishment using foreigners shall take the written employment contract of each foreigner to register with the Department of Employment and Workforce of the Ministry of Labour and Vocational Training for those who are located in Phnom Penh and with Municipal/Provincial Departments of Labour and Vocational Training for those who are located in cities and provinces.”

- ✓ Remove the requirement for employers to complete a pre-defined contractual template when registering the employment contract of foreigners at the Ministry of Labour and Vocational Training

## 2. WORK PERMITS FOR FOREIGN EMPLOYEES

### *Lack of work permit provisions for independent workers*

Under the existing system, only an employer may apply for a work permit on behalf of an employee. There are no provisions for individuals who undertake work in Cambodia but do not have a formal employer, such as freelance workers or independent consultants. Such individuals are nonetheless required by law to have a work permit

#### *Issue Description*

The current system, lacking any clear process for individuals working in Cambodia without a formal employer, makes it difficult for such individuals to be compliant with the country's laws. In practice they often need to request clients to provide them an 'employment contract' purely for the purpose of applying for a work permit, which is inefficient for all parties and presents the Royal Government an inaccurate view of the individual's employment status.

#### *Potential gains/concerns for Cambodia*

Introduce a process to allow individuals working in Cambodia but without a regular employer to apply for their own work permits.

#### *Recommendations*

- ✓ Introduce a process to allow individuals working in Cambodia but without a regular employer to apply for their own work permits

### 3. ENTERPRISE INFIRMARIES

#### *The creation of enterprise infirmaries in medium-sized businesses*

##### *Issue Description*

Prakas No. 330 concerning the Creation of Enterprise Infirmaries states that “An employer of an enterprise or establishment as stipulated in Article 1 of the Labour Law that employs 50 or more workers shall set up a permanent infirmary in his or her enterprise.”. The infirmary must include a full-time on-site doctor, paid by the employer, and depending on the size of the company may require additional full-time on-site healthcare staff.

While recognizing the importance of this law for businesses located in rural areas far away from hospitals, for businesses in Cambodia’s urban areas this seems an unnecessary provision that places additional costs upon the employer. For businesses in central Phnom Penh, there are a number of NSSF-contracted hospitals nearby so it is not clear what additional benefit the on-site infirmary offers.

##### *Potential gains/concerns for Cambodia*

This provision requires the hiring of at least one full-time medical professional whose salary is paid for by the employer. In instances where such an infirmary is unnecessary, this is a wasteful and inefficient policy that erodes Cambodia’s international competitiveness. Cambodia is in need of more well-trained healthcare professionals and those placed in unnecessary on-site infirmaries could be applying their skills to occupations of greater public benefit.

##### *Recommendations*

Only require on-site infirmaries to be established for businesses employing 50+ employees in areas without access to NSSF-contracted hospitals.

- ✓ Revise requirements for businesses employing 50+ employees to have their own on-site infirmaries

Permit businesses that are far from NSSF-contracted hospitals yet in geographic proximity to one another (eg. within SEZs or industrial parks) the option to pool resources and establish one shared infirmary.

## 4. SKILLS AND TRAINING

### *Recognition of vocational skills*

There are a wide number of ongoing initiatives to provide skills-based vocational training in Cambodia. These are provided by public institutions, private companies, industry associations and a large number of NGOs. Vocational skills development programs inevitably focus on different skills for different industries, while their objectives and method of delivery is variable. However, there is no framework in place through which the training provided, skills developed, and qualifications awarded, can be assessed and recognized in a nationally consistent way.

The lack of a formal framework for recognition of vocational skills limits the extent to which vocational training programs can contribute to the enhancement of Cambodia's human resources. Without any method of developing a clear picture of what level of training is being provided by which entities, there is a missed opportunity for coordinating programs in order to develop the types of skills demanded by the market. For both employers and prospective employees, it is difficult to assess suitability for particular roles where the training received by the employee has not been subject to any nationally recognized quality control system. This contributes to the widely-mentioned 'skills deficit' and has a negative impact on Cambodia's international competitiveness and economic development.

1. Recognize the importance of a strong vocational training system to supplement reforms being made in traditional education, and, as per the Education Strategic Plan 2014-2018, prioritize the implementation of a national qualifications framework.
2. Seek to share best practices with international partners and consult with industry associations in order to produce a comprehensive qualifications framework that can be applied nationally to recognize all vocational education and training programs.
3. Develop a body of certified assessors accredited by the Ministry of Labor and Vocational Training who are equipped with standardized assessment tools and who can ensure consistency and quality control within the system.

#### *Issue Description*

#### *Potential gains/concerns for Cambodia*

#### *Recommendations*

- ✓ Prioritize the implementation of a national qualifications framework that incorporates vocational education and training programs

## 4. SKILLS AND TRAINING

### *Recognition of skills gained through non-formal and informal learning*

#### *Issue Description*

Many of our members provide on-the-job training to employees and seek to promote from within wherever possible. There is no reference point through which to recognize non-formal and informal learning.

- Non-formal learning refers to organized programs of instruction that do not lead to any formal qualification such as in-house training provided by a private company.
- Informal learning refers to skills developed outside of any organized training program through experience developed in the workplace.

#### *Potential gains/concerns for Cambodia*

The lack of reference point relating to recognition of skills gained outside of a formal training program limits upward mobility and career development for employees that are talented yet lack formal qualifications. As an example, consider a mid-ranking manager who has performed well for the same company for ten years and now wishes to gain new skills through a vocational training program in order to be better equipped for a promotion. He/she lacks formal qualifications and therefore, despite their existing skills and knowledge, would be unable to access vocational training courses without first attending night school to gain the required formal qualifications. This slows down the employee's career development, making it more costly and time-consuming to develop new skills (and potentially discouraging them from doing so). The result is negative for both employer and employee – the employer is unable to benefit from the employee gaining new skills, and the employee misses the opportunity to improve their career and earn a higher salary.

#### *Recommendations*

Ensure that skills developed through non-formal learning and informal learning are included in a national qualifications framework. Provide guidelines on how recognized competency standards can be demonstrated in lieu of formal qualifications.

- ✓ Ensure that this framework includes skills developed through non-formal learning and informal learning

## 5. PUBLIC-PRIVATE SECTOR COMMUNICATION

### *Accessibility of information*

In some instances, the private sector needs a greater availability of information and advice in order to be compliant with the Kingdom's Labor Law and regulations. In areas where there is scope for multiple interpretations of the Law, there is a need for simple communication between the Ministry and the private sector so as to provide clarity and prevent cases of unintentional infringement of the Law.

Where specific issues arise that require engagement with the Ministry of Labour and Vocational Training, foreign business owners at times struggle to identify the correct department or individual who has authority over the subject at hand or who can offer advice.

This issue is greater within Phnom Penh, where some members report being unclear on whether an issue or auditing responsibility falls under the jurisdiction of the Ministry of Labor and Vocational Training or the Phnom Penh Municipal Department of Labor and Vocational Training.

Improved communication would decrease the amount of time and resources spent by both Ministry and businesses in relation to administrative processes, and would increase compliance with the Labor Law and other applicable regulations.

Furthermore, the private sector having a more complete understanding of their obligations under the Kingdom's laws and regulations would reduce opportunities for non-transparent practices.

#### *Issue Description*

#### *Potential gains/concerns for Cambodia*

#### *Recommendations*

1. Include English-language translations of applicable laws, degrees and Prakas on the website of the Ministry of Labor and Vocational Training.
2. Publish an English-language list of responsible persons (with clear name, position and responsibilities) on the Ministry of Labour and Vocational Training's website.
3. Consider creating an English-language hotline or specific team of officials with strong English language capabilities to assist non-Cambodian managers in navigating regulatory processes.

- ✓ Provide easier access to English-language information about Labor Law regulations and responsible persons with the Ministry of Labor and Vocational Training

# TAXATION

Cambodia's tax assessment system is currently undergoing reforms that EuroCham believes could significantly improve the business environment in the Kingdom. The General Department of Taxation has been tasked with increasing the country's tax revenues and has been very effective in implementing existing tax requirements to achieve this goal. The department's efforts are clearly having an impact as total tax revenue increased by 25% in 2015 despite no changes in basic tax rates. EuroCham welcomes these changes and wishes to contribute towards efforts to formalize the economy and increase compliance of Cambodia's taxation laws as this creates a more level playing field for compliant foreign businesses who have traditionally been outmaneuvered by companies that evade or underpay taxes. In particular, we welcome the decision to abolish the 'estimated regime' in favor of the new 'self-assessed regime', which, if effectively implemented, can enhance transparency while contributing to the realization of the Royal Government's tax revenue collection targets.

Taxation is a topic that impacts upon all lines of businesses. While industry-specific taxation-related issues are addressed within the sectorial chapters of this White Book, the current chapter focuses specifically on five core themes that have come up as cross-sectorial issues affecting many of our members:

- **Tax registration.** These recommendations relate to Prakas 1139, issued by the Ministry of Economy and Finance in October 2014 and subsequent revisions to the tax registration and re-registration process. While welcoming the drive towards formalization and some positive elements of the Prakas such as the requirement for all companies to have bank accounts (which is important for traceability), both the content of certain provisions and manner of implementation by tax officials have created burdensome requirements for businesses.

- **Withholding taxes.** Alongside Prakas 1139, Cambodia's system of withholding taxes was the most commonly raised tax-related issue by our members. The system effectively penalizes tax-compliant companies to the benefit of unregistered businesses. While we do believe that the issue of withholding taxes will lessen amidst ongoing formalization efforts, it currently represents a considerable burden on tax-compliant businesses in the Kingdom.

- **Value Added Tax.** While systems of Value Added Tax are common-place across the world and Cambodia's rate of 10% is not excessively burdensome, we do highlight some outstanding issues relating to methods of calculation of taxes due and the process for obtaining VAT refunds where applicable.

- **Tax on Profits and Minimum Tax.** The recommendations within this section look at how Cambodia's existing tax provisions

impact upon the Royal Government's goals of attracting foreign investment and diversifying the economy.

- **Tax administration.** Finally, we raise concerns over the GDT's Instruction No. 1127, issued January 26, 2016, which extends potentially considerable punitive measures for administrative inaccuracies on invoices from the provider to the customer.

Some of the issues raised within this chapter are being effectively handled by the authorities, but on an ad-hoc basis. In raising these issues within the White Book, we hope to foster the adoption of solutions that will be approved by the Royal Government and applied consistently to all businesses through formal processes.

## 6. TAX REGISTRATION

### *Requirement for company Chairmen to physically present themselves at the General Department of Taxation*

#### *Issue Description*

Prakas 1139, issued by the Ministry of Economy and Finance in October 2014, introduced revisions to the tax registration process for companies in Cambodia, including a stipulation that all companies currently registered with the General Department of Taxation (GDT) must re-register in accordance with the new process. Within Prakas 1139, there is a requirement for one of the principals of the company (i.e. Chairman of the Board of Directors or sole shareholder) to physically present him/herself to the Department to have a photo taken and have their fingerprints scanned in order to complete the tax registration process.

The GDT subsequently issued Notification 286 in January 2015 which stated that companies would not be able to obtain annual tax patents without having updated their company information in accordance with Prakas 1139. Therefore, it was made impossible to obtain tax patents without having the Chairman of the company physically present themselves to the GDT. This requirement has proven challenging and burdensome for some companies to comply with, particularly international companies whose Chairmen live abroad.

In April 2015, the GDT issued Instruction N.2439 which did permit Chairmen the option to formally delegate responsibility to physically present oneself to the GDT to a shareholding member or a legal person representative recognized by the Ministry of Commerce or other relevant public bodies. However, the instruction permits such delegation only as a temporary measure to allow an additional 3 to 6 months for the Chairman to present him/herself, and VAT certificates will not be presented until this has taken place.

#### *Potential gains/concerns for Cambodia*

The current configuration of the GDT's requirements for updating company information prior to receiving patents and VAT certificates places bureaucratic burden upon tax-compliant companies.

The provisions are perceived by the business community as somewhat inflexible and unnecessary – regional neighbors such as Thailand and Laos do not have such a requirement for business registration. In particular, the provisions can prove troublesome for international companies whose Chairperson may live abroad, necessitating a costly and time consuming visit to Cambodia to be physically present at the GDT. Where Chairmen are unable to come to Cambodia within the prescribed time, the business suffers considerable disruption as a consequence.

Provisions seen as excessively bureaucratic have a negative impact upon perceptions of Cambodia as an investment destination. In the worst-case scenario, international companies may choose not to expand their business into Cambodia if they believe they will encounter too many bureaucratic constraints.

Formally revise the requirement for the Chairperson of a company to physically present at the GDT for tax registration purposes.

It is our understanding that representatives with authorized Power of Attorney have occasionally been accepted by the GDT in lieu of the presence of the Chair, though this has been on an ad-hoc basis and we request that it be formally permitted.

Authorities could also consider permitting the Chairperson to delegate to an alternative company representative such as the Chief Executive Officer or country General Manager, or to introduce a process through which professional service providers can apply to the GDT for authorization to act as representative on behalf of client companies for tax registration purposes.

In the longer term, the Royal Government could consider digitally accepting photographs and fingerprints that have been verified by competent foreign authorities.

## *Recommendations*

- ✓ Formally revise the requirement for the Chairman of a company to physically present at the GDT for tax registration purposes

## 6. TAX REGISTRATION

### *Requirement for company to provide evidence of immovable property tax on leased commercial property*

#### *Issue Description*

Prakas 1139 also requires companies to provide receipts demonstrating that immovable property tax has been paid on the company's registered office. Instruction N.2439 of the GDT subsequently confirmed that "All property which is the head office of the enterprise or branch which must have tax registration and is liable to property tax must fill out the property identification number of 11 digits and attach the letter certifying property tax payment so that the General Department can check and verify".

#### *Potential gains/concerns for Cambodia*

This requirement can be difficult to comply with for companies who lease their registered office as they may encounter resistance from the landlord in obtaining the necessary documentation. Once again, this provision of Prakas 1139 is particularly burdensome on foreign-owned companies as they are not permitted to own land in Cambodia and, therefore, are more likely to lease their registered offices. Companies unable to comply with this provision encounter problems in renewing their tax registration documents.

This provision has a negative impact on investor sentiment by unfairly placing the burden of evidence of property tax payment on the lessee rather than the lessor. If the lessor has not filed a property tax return or is otherwise unwilling to provide evidence of filing such a return, it would seem unwarranted to penalize the lessee company for this. In particular this provision can be very burdensome on lessees in long-term lease agreements who find themselves having already paid for a lease that they now cannot use as a registered office.

To shift burden onto lessees in this manner seems opportunistic and makes Cambodia appear less investor-friendly.

#### *Recommendations*

While we are fully supportive of the Royal Government's efforts to enhance levels of tax compliance and increase tax revenues, we would suggest that penalties for non-compliance with property taxes should be levied upon property owners rather than lessees.

- ✓ Revise requirements for lessees to provide immovable property tax receipts for their registered office when registering a company

As such, we suggest that the GDT require immovable property tax receipts only where companies own their registered offices. Furthermore, the GDT should introduce a clear process within which lessees who have been unable to obtain property tax receipts from their lessor can declare this information to the GDT and not be consequently delayed in registering or re-registering their business.

## 7. WITHHOLDING TAXES

### *Withholding tax on services*

Withholding taxes have been designed as a mechanism for taxes to be collected from products and services provided by businesses unregistered for VAT. Tax-compliant companies making payments for services rendered to individuals or companies that are unable to provide a valid VAT receipt are required to withhold a proportion of the agreed fee from the service provider and to pay this proportion as tax. For services, this rate is set at 15%.

Unregistered service providers may have little understanding or concern for the taxation system and in practice they are rarely prepared to accept having a proportion of their fee withheld. As such, tax-compliant companies end up paying 115% of the fee – the full fee plus an additional 15% in withholding tax. If the service provider were tax-compliant, the hiring company would need to pay 10% VAT which could be offset against VAT received.

Cambodia has recently begun to introduce reforms to the tax system and enhance implementation so as to bring more businesses into the formal tax regime. However, a majority of service providers still remain unregistered and in some sectors it can be challenging for businesses to identify and confirm the status of tax-registered service providers.

The withholding tax on service provision places an additional tax burden on compliant businesses and unfairly advantages non-compliant businesses. The tax-compliant company incurs additional expense (115% of service fees) when hiring an unregistered service provider, whereas the unregistered business and non-compliant businesses who hire them incur no such costs. **As such, the cost of doing business is increased only for the compliant companies that Cambodia should be seeking to attract.**

Recognizing that the Royal Government needs to maintain and increase tax revenues, we recommend that the Royal Government reconsider the principle of withholding tax on services which unfairly penalizes tax-compliant companies and consider abolishing the system of withholding taxes.

Should this recommendation not be accepted, we suggest that the responsibility for enforcing the principle that unregistered businesses should not be able to do business within the Kingdom should be borne to a greater extent by the Royal Government rather than tax-compliant companies. In transmitting withholding tax, the compliant company is currently required to include the name and services provided by the unregistered service providers for which they are paying the withholding taxes. The General Department of Taxation should be using this information to identify companies that are providing services without having undertaken tax registration and to improve tax compliance levels which, over time, would reduce the burden of withholding tax.

### *Issue Description*

### *Potential gains/concerns for Cambodia*

### *Recommendations*

- ✓ Reconsider the principle of withholding tax on services which unfairly penalizes tax-compliant companies

## 7. WITHHOLDING TAXES

### *Withholding tax on renting a property*

#### *Issue Description*

Taxes due by lessees who are renting movable or immovable property depend upon the status of the property owner:

- If renting a property owned by an individual person, the lessee is required to withhold 10% of rental fees due and to pay to the GDT as withholding tax.
- If renting a property owned by a registered company, the lessee must pay both withholding tax at a rate of 10% and VAT at a rate of 10%.

As with the provision of services, landlords are in practice often unwilling to accept a 10% reduction in their rental fees and the cost of the withholding tax is thus borne by the lessee who is thus incurring total expenses equivalent to 110% of the agreed rental fees if the property is owned by an individual person. If the property is owned by a company and VAT is due as well, total expenses equate to 120% of the agreed rental rate.

#### *Potential gains/concerns for Cambodia*

As is the case with withholding tax on services, withholding tax on rent places an additional tax burden and increases costs for compliant businesses while unfairly advantaging non-compliant businesses. The provisions are particularly burdensome for companies of foreign ownership as they are unable to own land and therefore more often have a need to rent property.

In the case of a property being owned by a registered company, the current requirements are contradictory to the principle of withholding tax. Withholding tax as a concept is supposed to allow the Royal Government to collect tax revenues in lieu of VAT in instances where the provider of the goods or services is unregistered. Whereby the company owning the property can provide a valid VAT receipt one would therefore assume that withholding taxes should no longer be required.

Property rental is one of the major components of most business' expenditure, and therefore a taxation policy that increases expenses borne by lessees by up to 20% is damaging to Cambodia's international competitiveness. Indeed, few other ASEAN countries require withholding taxes to be paid on rental fees. The countries that do withhold taxes do so at a considerably lower rate (in Thailand, lessees must pay a 7% VAT rate and 5% withholding tax rate).

#### *Recommendations*

Apply the same rules to withholding tax on rent as to withholding tax on services— withholding tax should only be payable in cases where unable to provide a valid VAT receipt.

- ✓ Stop the practice of charging both withholding tax and VAT on properties rented from companies

## 8. VALUE ADDED TAX

### *Value Added Tax when exporting services*

Article 63 of the Law on Taxation specifies that services are considered to ‘take place’ within Cambodia if the service ‘is performed’ within the Kingdom, unless the service provision relates to immovable property located abroad or the provision of transportation services abroad. Article 64 subsequently details that services rendered outside of the Kingdom of Cambodia (exported services) are subject to a VAT rate of 0%.

VAT leaflet No. 13 of the General Department of Taxation provides further guidance, stating that “To qualify for zero rating as an export, an exporter of services has to be able to demonstrate that the service he has provided was used or consumed outside the Kingdom of Cambodia.”

However, the Law and subsequent public announcements provide no specific guidance on how to define what it means for a service to be ‘used or consumed’ abroad. This creates a certain amount of ambiguity for some service providers over whether VAT should be due or not. Consider for example a company that provides outsourcing services building smartphone applications for companies based in Europe. The work is conducted by employees in Cambodia but the final product is provided to the European company and distributed by that company within Europe. There is thus a reasonable case to be argued that the service is consumed outside of Cambodia though there are no formal criteria against which this argument can be assessed. It is our understanding that, at the current time, tax officials determine whether VAT is due for such services on a case-by-case basis.

Ambiguity creates regulatory risks for companies exporting services from Cambodia as there is not enough specificity within the Law to be able to confidently know whether VAT will be due on their services. This lack of clarity requires tax officials to make ad-hoc assessments without clear guidelines which can lead to inconsistency or opportunities for non-transparent practices.

In practice, companies providing services to clients located abroad are sometimes required by the GDT to pay VAT on these services. This represents a drag on Cambodia’s international competitiveness and can discourage investment in export-orientated service industries. Regional competitors such as Vietnam do not require VAT to be paid on exported services except where the customer has a permanent establishment within Vietnam.

Provide more specific guidance on what it means for services to be “used or consumed outside the Kingdom of Cambodia”. Our recommendation would be to provide a definition that is generous towards service providers claiming that their services are consumed abroad, as this can help to attract investment in new sectors and therefore to contribute towards the goal of diversifying the Cambodian economy.

#### *Issue Description*

#### *Potential gains/concerns for Cambodia*

#### *Recommendations*

- ✓ Provide more specific guidance on VAT requirements for exported services

## 8. VALUE ADDED TAX

### *Calculation of Input Tax for businesses making both taxable and non-taxable supplies*

#### *Issue Description*

Upon making a tax declaration, VAT due to the tax authorities is defined as 'Output Tax - Input Tax', meaning the total amount of VAT charged on supplying of goods or services to customers minus VAT paid on import of goods or the VAT on locally purchased goods or services.

Articles 57 and 58 of the Law on Taxation define the types of products and services that are non-taxable supplies including provision to hospitals, diplomatic missions, international organizations, and other non-profit organizations recognized by the Ministry of Economy and Finance as acting in the public interest.

Some businesses make both taxable and non-taxable supplies (e.g. supplies to private companies and to diplomatic missions or hospitals). Current practice by the General Department of Taxation is to require such businesses to calculate the proportion of the value of taxable sales against the value of total sales, and to use this proportion to calculate how much Input Tax can be claimed by the provider for VAT offsetting.

Consider the example below of Business X for whom 75% of the value of total sales is made to tax-exempt customers:

- Whereby products were **imported** for a **tax-exempt entity**, Business X pays no VAT at the point of importation and receives no VAT at the point of sale. Net effect is zero.
- If **selling** to a **tax-exempt entity** a product for which Business X has paid VAT, such as that paid on locally-sourced inputs or products imported without a specified tax-exempt end customer, it is permitted for Business X to collect VAT from the tax-exempt entity. In this case, Output Tax will equal 100% of the VAT received, whereas Input Tax will equal only 25% of the VAT paid (as this is the proportion of the value of taxable supplies against the value of all supplies).
- Whereby Business X is **selling** to a **tax-paying entity**, the same applies. Output Tax will equal 100% of the VAT received, whereas Input Tax will equal only 25% of the VAT paid.

The net effect is that an additional tax burden is placed upon companies who provide to tax-exempt customers. Whereas a business that serves only taxable supplies is due to the tax authorities 100% of VAT received minus 100% of VAT paid for inputs, Business X is required to pay 100% of the VAT that it has collected from customers but is only allowed to offset 25% of the VAT it has paid for inputs.

This practice has a significant financial impact upon those companies for whom a large proportion of their sales is to tax-exempt customers. It represents an additional burden that is inconsistent with the spirit of the provisions of the Law on Taxation. In principle, VAT is a tax that should be passed between companies throughout the production and distribution process and received by the Royal Government upon final consumption of the product or service, hence the allowance for Input Tax to be offset against Output Tax. In the example of Business X above, they collect no VAT on the majority of their sales (to tax-exempt customers) and yet the value of these sales serves as the basis of the calculation to determine the proportion of their VAT expenditure that they can claim as Input Tax. Thus from a VAT perspective, their provision of non-taxable supplies does not confer upon them any undue benefit (net VAT effect is zero on these transactions) and yet they are being penalized with a reduction in the amount of Input Tax that can be claimed for offsetting.

Beyond the perceived unfairness of the principle of this method of calculation, the practice has additional negative implications. For one, it forces tax-compliant providers to incorporate the additional VAT burden into their pricing for tax-exempt customers who typically serve a public interest. Tax-exempt customers thus have to allocate more resources to these products and services or otherwise source from a non-tax-compliant vendor which is against the Royal Government's formalization objectives.

Furthermore, whereby products imported for a tax-exempt customer are not liable for VAT yet products sourced locally are, this discourages local sourcing and thus limits opportunity for Cambodian businesses to participate in the product value chain.

We recommend that where businesses generate both taxable and exempt sales and have aligned their VAT collection with the provisions of the Law on Taxation regarding taxable and non-taxable supplies, such businesses should be permitted to offset 100% of their Input Tax paid against Output Tax collected and due to the Royal Government.

## *Potential gains/concerns for Cambodia*

## *Recommendations*

- ✓ Permit business making both taxable and non-taxable supplies to offset 100% of their Input Tax paid against

## 8. VALUE ADDED TAX

### *Value Added Tax refunds process*

#### *Issue Description*

Tax-registered companies able to provide valid tax invoices demonstrating that their VAT input credits are higher than their VAT output credits are eligible to apply to the GDT for a VAT refund.

However, many of our members report that the response time of the GDT in processing VAT refund claims is much longer than they would expect and that ultimately obtaining a VAT refund is very challenging.

There are already clear guidelines in place for applying for VAT refunds as prescribed by Circular 004 (2005) of the Ministry of Economy and Finance. This issue is one of administration and implementation rather than of law.

#### *Potential gains/concerns for Cambodia*

The principle of issuing VAT refunds is commonly accepted across the tax regimes of most countries and obtaining a VAT refund upon provision of the required documents is usually a relatively simple process.

Whereby the Cambodian tax administration renders it difficult to obtain VAT refunds this effectively adds costs to doing business in the Kingdom and has a negative impact upon Cambodia's international competitiveness.

#### *Recommendations*

In the same manner as Prakas 1470 of November 2015 stressed the need for greater adherence to procedural requirements and timeframes relating to the tax reassessment process, we request that the Royal Government reiterate the timeframe within which VAT refund applications should be processed and emphasize the importance of this timeframe being followed.

- ✓ Reiterate the timeframe within which VAT refund applications should be processed and emphasize the importance of this timeframe being followed

## 9. TAX ON PROFITS AND MINIMUM TAX

### *Tax on Profit incentives for Qualified Investment Projects*

Cambodia's Law on Investment (1994) plus subsequent sub-decrees and amendments allow for investment projects to apply for 'Qualified Investment Project' status which grants a number of investment incentives such as preferential tax treatment and faster administrative procedures.

#### *Issue Description*

One of the most commonly-cited benefits of obtaining QIP status is a 'profit tax exemption' valid for between 3 and 9 years depending upon the size and financial performance of the project. The official website of the Council for the Development of Cambodia (CDC) describes QIPs benefiting from a 'profit tax exemption' or 'tax holiday period'<sup>2</sup>.

However, to name this particular incentive a 'profit tax exemption' is potentially confusing. While Article 20.4 of the Law on Taxation prescribes a 0% Tax on Profit rate for "qualified investment project during the tax exemption period as determined by CDC", Article 23 of the Law on Taxation states that:

"An additional profit tax shall be paid in the amount of 20/100 upon

- a. distribution of retained earnings or annual profit after tax, if an enterprise is distributing retained earnings or profit that were subject to a tax rate of 0% according to paragraph 4 of Article 20(new) of this Law."

Companies who have not enjoyed QIP tax incentives are not subject to this additional profit tax on dividend distributions. Therefore, Article 23 of the Law on Taxation effectively provides a 'clawback' mechanism – if a QIP has retained earnings during the 'profit tax exemption' period, the 20% tax rate that they would have been paying if not holding QIP status is applied at the point that they seek to repatriate dividends.

The majority of companies that apply for QIP status are foreign investors who are likely to attempt to repatriate profits at some point. For these companies, Article 23 of the Law on Taxation essentially negates the effects of the 'tax holiday period'. While they do benefit from the opportunity to postpone tax dues which can help with cash flow and investment in growing the business, they are ultimately subject to the same 20% rate of tax as non-QIP companies provided that they attempt to issue dividends.

This issue is problematic in two senses. First, the provisions of Article 23 of the Law on Taxation are not widely publicized – there is for example no mention of the provision within the aforementioned 'Investment Incentives' page of the CDC. Companies considering an investment in Cambodia may only become aware of this Article having already invested considerable time and money into exploring business plans in Cambodia and implementing due diligence. Where companies become aware of the provision relatively late in the planning process this can erode sentiments towards Cambodia as an investment destination.

#### *Potential gains/concerns for Cambodia*

## 9. TAX ON PROFITS AND MINIMUM TAX

### *Tax on Profit incentives for Qualified Investment Projects (...continued)*

Secondly, the ‘clawback’ rate within Article 23 negates much of the perceived benefit of the ‘tax holiday period’ provision and thereby reduces the effectiveness of the investment incentive. As Cambodia transitions towards lower-middle income status and its competitive advantages provided by preferential treatment by key markets such as the EU and USA begin to erode, Cambodia needs to be competitive compared to other countries from ASEAN and elsewhere to attract foreign investment. While a ‘race to the bottom’ is not necessarily the most effective strategy for attracting investment, whereby regional neighbors such as Myanmar are offering genuine tax holidays without the ‘clawback’ provision Cambodia’s incentive system may be seen as less competitive.

### *Recommendations*

- ✓ Consider revising Cambodia’s QIP incentives relating to Tax on Profit so as to offer more competitive tax advantages to investors

Consider revising Cambodia’s QIP incentives relating to Tax on Profit so as to offer more competitive tax advantages to investors who successfully apply for QIP status.

In the meantime, ensure that official websites and publications designed to encourage investment provide as full a picture as possible of the existing incentives system including the provisions of Article 23 of the Law on Taxation.

## 9. TAX ON PROFITS AND MINIMUM TAX

### *Encouraging business models with lower profit margins*

Cambodia's Law on Taxation includes provisions for a Minimum Tax which is calculated at 1% of annual turnover. Tax on Profit payments can be offset against Minimum Tax payments due. For most profit-making companies, Tax on Profit payments regularly exceed payments due for Minimum Tax and therefore tax is only paid to the value of the Tax on Profit calculation.

However, these provisions can make businesses with lower profit margins significantly less economical. Consider the example below:

<b>PROFIT MARGIN</b>	2%
<b>ANNUAL TURNOVER</b>	\$1,000,000 USD
<b>GROSS PROFIT</b>	\$20,000
<b>TAX ON PROFIT CALCULATION</b>	$\$20,000 * 20\% = \$4,000$
<b>MINIMUM TAX CALCULATION</b>	$\$1,000,000 * 1\% = \$10,000$
<b>TOTAL TAXES DUE</b>	\$10,000 (higher of the two figures)
<b>NET PROFIT AFTER TAX</b>	\$10,000
<b>EFFECTIVE TAX RATE</b>	<b>50%</b>

In this example, Minimum Tax payments exceed Tax on Profit payments and thereby increase the effective tax rate to 50%. Compared to gross profits the company in this example bears a considerably higher tax burden than most other companies, which may cause the business to fail and result in loss of jobs and tax revenues. Turnover-based tax rates are relatively rare in other countries and prospective investors considering Cambodia for a low-profit-margin business are likely to be discouraged by these Minimum Tax requirements. This is counterproductive to the Royal Government's policy of encouraging economic diversification.

Prakas 1820, issued 25th December 2015, stipulates that businesses trading in gold, diamonds, or money transfer (business models that typically have high turnover and low profit margins) are no longer required to pay Minimum Tax. We believe that to expand this principle to other types of business activity would help to encourage economic diversification. Indeed, recognizing that turnover-based tax rates are rare elsewhere, the Royal Government could consider removal of the Minimum Tax rate.

Recognizing that prepayment of Minimum Tax makes an important contribution to the GDT's cash flow, we would suggest replacement of the system with a 'provisional tax' prepayment system which would be based upon the value of the company's previous Tax on Profit payments.

### *Issue Description*

### *Potential gains/concerns for Cambodia*

### *Recommendations*

- ✓ Consider revising Minimum Tax requirements for businesses with lower profit margins

## 9. TAX ON PROFITS AND MINIMUM TAX

### *Entertainment expenses*

#### *Issue Description*

Article 19.1 of the Law on Taxation states the following:

“For the provisions for the Tax on Profit, expenses that shall not be allowed as a deduction are:

1. Any expense on activities generally considered to be amusement, recreation, or entertainment or the use of any means in connection with such an activity.”

Many of our members operate within the services sector, within which entertaining clients can be described as an essential part of account management and client retention. As such, expenses relating to entertainment represent a significantly larger proportion of their overall business expenses.

#### *Potential gains/concerns for Cambodia*

Companies operating within the services sector typically have higher expenditure on entertainment than companies conducting industrial activity. Whereby these companies are unable to claim expenses relating to entertainment for Tax on Profit purposes, this artificially inflates their stated profit and thereby subjects them to a higher tax burden. Cambodia is therefore a less competitive destination for such business models.

#### *Recommendations*

We would request that Cambodia consider aligning its treatment of entertainment expenses with regional competitors and introducing a capped allowance for deducting such expenditure from Tax on Profit calculations.

- ✓ Introduce a capped allowance for tax-deductible entertainment expenses

By means of comparison, Thailand’s Revenue Code does treat entertainment expenses as a tax-deductible expense yet caps the total deduction at 0.3% of total gross revenues for the accounting period. In Laos, Article 34 of the tax codes allows for entertainment expenses for guests to be deducted up to a limit of 0.4% of total revenues.

## 10. TAX ADMINISTRATION

### *Revised requirements for invoicing*

All VAT-registered taxpayers are required to issue either a tax invoice or a commercial invoice to customers when delivering goods or services. Where the customer is also a VAT-registered taxpayer they are likely to request a tax invoice so as to be able to claim VAT input credits and have the transaction recognized as an expense for a reduction in Tax on Profit.

The GDT's Instruction No. 1127, issued 26th January 2016, reiterated the required information that a tax invoice must contain (as stipulated by the Law on Taxation), and added additional requirements pertaining to the quality of ink and invoice paper to be used and the mandatory use of Khmer language (English may be included underneath the Khmer text). In the Annexes to the Instruction, invoice templates<sup>3</sup> were provided for use by VAT-registered taxpayers when issuing invoices.

The Instruction reiterates the existing penalties prescribed within the Law on Taxation for VAT-registered taxpayers who fail to issue tax invoices in accordance with the GDT's requirements. However, Instruction 1127 also stipulates that tax invoices that do not meet the specified requirements will now be ineligible for expense claims with respect to Tax on Profit. This is a new measure – previously an incorrect invoice would only be excluded from use as a VAT input credit.

The tax invoice templates provided in the Annexes to Instruction 1127 are useful tools that provide clarity for taxpayers and will be of assistance in the ongoing efforts to formalize the Kingdom's tax administration through transition of all companies into the self-assessed regime.

This being the case, the expressed intention to disallow incorrect tax invoices from use as an expense claim for Tax on Profit purposes extends punitive measures for such inaccuracies from the provider to the customer. In effect, an administrative error by the tax invoice provider can now result in the customer being fined 20% of the sale price through the artificial inflation of their profit figures, which would appear to be an excessively punitive measure to place upon customers. It seems more likely that administrative errors will be made over the next few years as more businesses transition into the self-assessed regime for the first time.

#### *Issue Description*

#### *Potential gains/concerns for Cambodia*

#### *Recommendations*

1. Reconsider the penalty system for the issuing of incorrect tax invoices so that the penalty is borne by the issuer rather than the recipient.
2. Clarify that the punitive measure within Instruction 1127 to make tax invoices not meeting its requirements ineligible for claiming as an expense for Tax on Profit purposes does not apply to invoices issued by non-registered service providers including non-resident companies.
3. Confirm that the provisions of Instruction 1127 should not be applied retrospectively in tax reassessments.

✓ Revise punitive measures for incorrect invoicing set out in the GDT's Instruction 1127

# CUSTOMS, TRANSPORT *and* LOGISTICS

Cambodia's Diagnostic Trade Integration Strategy and Trade SWAp Roadmap 2014-2018, produced by an inter-ministerial committee under the leadership of the Ministry of Commerce, contains extensive analysis of current issues in Cambodia relating to Customs clearances, transport, and logistics. The roadmap lays out broad, ambitious plans to address outstanding issues in Trade Facilitation and Trade Logistics<sup>4</sup>. To avoid duplication, this chapter of the White Book seeks not to be an exhaustive study of this field but to relay to the Royal Government the obstacles our members most commonly encounter, and the short-term actions could help to address these issues.

Through consultation with our membership on the topics of Customs, transport and logistics, the overarching message was that while significant

challenges remain, the business environment is slowly moving in a positive direction. There have been some important achievements that were very well received by the private sector. EuroCham Cambodia is an active member of the Customs Private Sector Partnership Mechanism and welcomes the active efforts made to address issues raised through the Government-Private Sector Forum (G-PSF). In particular, the publication of a Handbook on Customs Clearance, in both Khmer and English language, is a positive initiative that increases understanding and awareness of the administrative processes of the General Department of Customs and Excise (GDCE). Likewise, the online National Trade Repository (NTR)<sup>5</sup>, launched in 2015, is a valuable resource to assist the private sector in understanding the Kingdom's import-export requirements.

With regard to Customs, the recommendations of our members are aimed at improving the speed and ease with which they can navigate import-export processes. As Cambodia seeks to benefit from ASEAN integration and more actively participate in regional value production chains, the GDCE's processes, administrative systems, and human resources will need to be orientated towards supporting the requirements of highly time-sensitive inputs and deliveries.

For transport and logistics, it should be noted that our first Business Confidence Survey conducted in 2015 found our members to recognize and appreciate the Royal Government's ongoing investment in physical infrastructure—by far the most mentioned category when members were asked to identify which areas of the business environment had most improved

over the past 12 months. Accordingly, our recommendations focus on international shipping and a number of factors outside of physical infrastructure that make shipping to and from Cambodia more expensive than competitors within the region. As the Cambodian economy is not yet sufficiently advanced to have an integrated domestic supply chain, shipping is of vital importance and high shipping costs therefore have a significant negative impact upon the Kingdom's international competitiveness.

## 11. CUSTOMS

### *Formal payments to Customs officials for out-of-hours service and travel expenses*

#### *Issue Description*

The General Department of Customs and Excise (GDCE) has a List of Fee and Charges relating to services provided by the department such as processing fees and inspection fees. The list is publically available and can be found in Annex B of the Handbook on Customs Clearance.

Meeting shipping deadlines and delivery schedules is of critical importance to manufacturers in the Kingdom, some of whom are integrated into regional production value chains that are dependent upon their input. At the current time, the working hours of GDCE officials do not always facilitate the achievement of these operational necessities leading companies to request Customs services outside of the formal working schedule. However, the existing list does not specify any fees for out-of-hours services nor for other supplementary charges such as compensating the travel expenses of the Customs official.

#### *Potential gains/concerns for Cambodia*

The private sector recognizes that Customs officials should be compensated for providing out-of-hours services and is open to paying reasonable additional service fees in exchange for assistance in meeting their delivery schedules.

However, the lack of a formal mechanism through which such payments can be provided creates concerns from a governance and transparency perspective as Customs officials have no process through which to document and provide formal receipts for these services.

#### *Recommendations*

- ✓ Expand the List of Fees and Charges to include out-of-hours services and reasonable expenses for Customs officials

1. We request that the existing List of Fee and Charges be expanded so as to include standardized fees that Customs officials can charge for the provision of services outside of regular hours.
2. Provide guidelines on appropriate expenses (such as travel expenses) for which Customs officials may be compensated by private companies in exchange for a formal receipt.

## 11. CUSTOMS

### *Importing products subject to tax exemption through Qualified Investment Project schemes*

Projects meeting the criteria defined by the Council for the Development of Cambodia (CDC) can apply for Qualified Investment Project (QIP) status and benefit from a number of investment incentives including import tariff exemptions.

#### *Issue Description*

In order to benefit from import tariff exemptions, QIPs are required to submit to the CDC a Master List of goods that they are likely to require for the project including a schedule of quantities and values. Upon approval by the CDC, this Master List serves as the basis of the import tariff exemption and must be submitted to the GDCE at the point of importation alongside regular import documents. Products not listed on the Master List are subject to regular import tariffs.

However, through consultation with our members it is clear that importing products intended to be exempt from import tariffs can be difficult. In particular:

- **Imports by providers of QIP customers.** Under existing laws, suppliers who are importing products to provide to a QIP may benefit from the import tariff exemptions applicable to the QIP. However, there is a perception that officials within Customs have a low level of awareness and understanding of this process which can make it difficult for providers to benefit from the tariff exemptions that they are entitled to
- **Instances where market price does not match the price on the Master List.** The submittal of Master Lists to the CDC can be required up to three years prior to implementation of a QIP which renders it necessary to forecast the likely quantities and values of products on the List. At the point that the QIP or its provider seeks to import the product, the market price can be different to that which was forecast in the Master List. This can create problems in passing the product through Customs. GDCE have commented that they see the Master List figure as a 'median price' and that a difference in value of around 20% in either direction can be tolerated, though in practice this principle isn't always followed by customs officials and in any case the difference in price can on certain products exceed this threshold beyond the control of the QIP or its provider.

Where there are unclear processes, or when public officials and the private sector lack understanding of these processes, this limits the ability for QIPs to benefit from the investment incentives granted to them. QIPs are able to negotiate lower prices with suppliers on the basis of their import tariff exemptions, and where these QIPs are unable to access such benefits it is likely to cause them unexpected costs or operational disruption and reduce their confidence in Cambodia as an investment destination. Likewise, it will reduce the credibility of the incentive in the eyes of prospective investors who gain knowledge of such obstacles.

#### *Potential gains/concerns for Cambodia*

## 11. CUSTOMS

### *Importing products subject to tax exemption through QIP schemes (...continued)*

Regarding the issue of market prices not matching the Master List, in the majority of cases the market price is actually lower than the forecasted price and the tax exemption therefore actually represents less of a revenue opportunity cost than had previously been approved. A lack of flexibility on the part of Customs officials on this issue wouldn't appear to serve any particular benefit yet causes considerable delays and can encourage end consumers to purchase from the informal sector rather than go through the troublesome process of demonstrating eligibility for import tax exemptions.

#### *Recommendations*

- ✓ Provide clearer guidelines on the process through which suppliers to QIPs can benefit from import tariff exemptions applicable to the QIP, particularly where the market price is different to the Master List price

We request that clearer guidelines be published on the process through which suppliers to QIPs can benefit from import tariff exemptions applicable to the QIP. These guidelines should include specific processes for Customs officials to follow in scenarios where the market price is considerably different to the forecasted price within the Master List.

In support of such an initiative, we would request that training be undertaken with the relevant Customs officials to ensure that these guidelines and processes are effectively implemented.

## 11. CUSTOMS

### *Customs modernization*

Our members welcome the ongoing efforts of the GDCE to modernize customs procedures and, in particular, to introduce automated processes supported by efficient online systems. There is a general perception that Customs procedures are indeed becoming easier as a result of recent automation initiatives such as the roll-out of the ASYCUDA system.

As the GDCE recognizes in its Strategy and Work Program on Reform and Modernization 2014-2018, there is opportunity to realize further time and cost savings through expanding use of electronic transactions. Through consultation with our members, two areas were frequently raised:

- Existing capabilities for GDCE to receive and accept documents electronically are limited and in many cases there is still a need for a representative of the owner of the cargo to be physically present at an ASYCUDA center in order to answer queries from customs officials or provide additional documentation in hard copy. Additional documentation, such as revised Master Lists, would be quicker to provide electronically rather than in person.
- Where customs services fees are due, there is currently no system through which payments can be made electronically. A secure online payment system would again reduce the need for representatives to make themselves physically present.

To introduce more opportunities for representatives to provide documents and payments online would not only serve to streamline and further systematize customs processes but, furthermore, would support the Royal Government's ongoing efforts to promote transparency by reducing face-to-face transactions and making it easier to trace payments and accountability.

GDCE has an ambitious reform program designed to transform the department into a modern Customs Administration applying best practices that meet international standards. This initiative incorporates multiple reform programs as part of a broader long-term project. In the implementation of this reform program there is a need to establish priorities in order to allocate finite resources to the most beneficial projects. Relaying feedback from our members, we recommend that a secure online payment system and expansion of online document capabilities are prioritized in the near future.

#### *Issue Description*

#### *Potential gains/concerns for Cambodia*

#### *Recommendations*

- ✓ Prioritize the implementation of a secure online payment system and expansion of online document capabilities for Customs

## 12. TRANSPORT AND LOGISTICS

### *Addressing the high cost of international shipping*

#### *Issue Description*

Cambodia's recent economic growth has been built upon support for export-oriented businesses. At the same time, the economy is not yet sufficiently advanced so as to have an integrated domestic supply chain. Accordingly, many businesses in Cambodia are reliant upon international shipping via Sihanoukville Autonomous Port or, for smaller vessels, Phnom Penh Autonomous Port to import production inputs and export their finished product.

Port costs and other costs relating to international shipping are significantly higher in Cambodia than most other ASEAN countries. EuroCham would be happy to share cost benchmarking exercises conducted by some of our members that demonstrate how port dues and charges relating to comparable vessels are 3.65 times higher at Sihanoukville than at Cai Mep, Vietnam. The difference is even higher compared to other ports in the region such as Port Klang, Malaysia.

While it may be unrealistic to expect Cambodia to reach the same cost per unit as ports in larger markets that benefit from greater economies of scale, the data provided to us suggests significant differentials in pricing for comparable services. For example, a 2014 invoice from Sihanoukville Autonomous Port lists lift-on lift-off (LO/LO) charges for a laden 20-foot container as costing 4.75 times more than the published tariffs for the same service at Cai Mep International Terminal (CMIT) as of January 1, 2013.

#### *Potential gains/concerns for Cambodia*

High port fees and charges force shipping lines and freight forwarders to share this cost burden with end customers who are supporting the Cambodian economy by directly or indirectly creating jobs and improving the Kingdom's balance of trade.

Given the aforementioned importance of international shipping to many companies doing business in Cambodia, port costs that are significantly higher than those of regional competitors have a direct impact upon assessments of Cambodia as a prospective investment destination. Furthermore, they make Cambodian exports less competitive as exporters will incorporate transport and logistics costs into their quotations to clients abroad.

To address the issue of high costs of international shipping to and from Cambodia, we suggest that the Royal Government conduct cost benchmarking activities against other ports within the region and use the data gathered to identify which elements of the current fees and charges levied by Sihanoukville Autonomous Port are of highest variance from regional averages. These cost centers could then be prioritized for cost reduction activity. EuroCham Cambodia would be happy to facilitate the sharing of benchmarking data with the Royal Government.

In the longer term, we recommend that the Royal Government adopt a stance of encouraging greater competition for Sihanoukville Autonomous Port. As the Kingdom's only international and commercial deep seaport, and as a wholly government-owned entity, there would appear to be little pressure on port management to reduce fees and charges. In neighboring Vietnam there are both publically and privately owned ports which fosters price competition. Greater involvement by the private sector in managing Cambodian ports, whether that means an additional port or through partial privatization of Sihanoukville Autonomous Port, would provide greater impetus towards reducing fees and charges and improving quality of services and infrastructure.

## *Recommendations*

- ✓ Reduce the high cost of international shipping to and from Cambodia

## 12. TRANSPORT AND LOGISTICS

### *Mandatory use of KAMSAB as a shipping agent for marine cargo*

#### *Issue Description*

All marine cargo vessels approaching Cambodian ports are required to enlist the services of Kampuchea Shipping Agency and Brokers (KAMSAB) as shipping agent to represent the vessel when dealing with port authorities. Only KAMSAB is authorized to request the port to release containers from its control.

Feedback from our membership is that KAMSAB is relatively costly and provides little in terms of value-added services. In some cases there are overlapping responsibilities between KAMSAB and port authorities – for example, we understand that some members have been required to pay fees to both entities for the completion of tally sheets (inventory of containers checked at the dock).

The mandatory use of a state-owned shipping agent is not common practice in the region – within ASEAN, only Myanmar has a similar requirement. In other countries, it is permitted for shipping lines to select a shipping agent from a number of privately-owned service providers or for the shipping line to communicate directly with port authorities.

#### *Potential gains/concerns for Cambodia*

The mandatory use of one shipping agent imposes additional costs on shipping lines that would otherwise be able to conduct communication with the port themselves or select a more cost-efficient service provider from the private sector. As mentioned above, such costs are ultimately shared with end users and therefore increase the cost of doing business in Cambodia and have a negative impact upon the country's international competitiveness.

#### *Recommendations*

We request that the Royal Government permit companies other than KAMSAB to offer shipping agency services for marine cargo.

- ✓ Permit companies other than KAMSAB to offer shipping agency

## 12. TRANSPORT AND LOGISTICS

### *Process for recovery of shipping containers in cases of unclaimed goods*

Several of our members report to us difficulties for shipping lines to recover shipping containers in instances where the cargo has been abandoned by the end customer. Abandoned cargo can be kept in containers at the port for an extended period without clear guidance on how the container can be reclaimed.

#### *Issue Description*

Under Article 54 of the Cambodian Law on Customs, there are clear guidelines in place relating to unclaimed goods:

“Where the owner of the goods has been determined, Customs must immediately notify owners of unclaimed goods that such goods will be sold at public auction in accordance with the provisions of Article 55 of this Law, if not claimed within a period of sixty (60) days from the date the notification was issued.

In the case where no owner can be found, a public notice shall be made in a time and manner determined by the Director of Customs to notify owners.

Owners have sixty (60) days from the date of such notice to make a claim for their goods. If such period of time is exceeded, the goods will be sold at public auction in accordance with the provisions of Article 55 of this Law”

This Law refers to the unclaimed goods but makes no mention of the containers within which they have been stored. Furthermore, feedback from our members is that the process required by the Law is not being implemented and that, subsequently, unclaimed goods and their containers can sit unprocessed in the port for long periods of time. Some members have been requested to pay undocumented fees in order to have the contents of their containers processed.

Ambiguity and uncertainty over the process for recovering containers holding abandoned cargo makes it more difficult for shipping lines to recover such containers. Where unable to recover the containers, the shipping line incurs both opportunity costs and, potentially, storage costs payable to the port. Such costs are ultimately spread and shared with end customers which, as in the two recommendations above, increases the cost of doing business in Cambodia and has a negative impact upon the country’s international competitiveness. In this instance the costs incurred are relatively small, but nevertheless impacts several of our members and could be fixed relatively quickly and inexpensively if additional guidance were provided.

#### *Potential gains/concerns for Cambodia*

Furthermore, addressing this issue would reduce opportunities for non-transparent practices, thereby supporting the Royal Government’s ongoing transparency initiatives.

## 12. TRANSPORT AND LOGISTICS

*Process for recovery of shipping containers in cases of unclaimed goods (...continued)*

### *Recommendations*

✓ Assist shipping lines in recovering containers holding abandoned cargo

1. We request that the Royal Government provide clarification as to what is required from shipping lines in order to reclaim containers that have been used for storing unclaimed goods.
2. Clarify who is responsible for charges associated with unclaimed goods, and whether proceeds from auction can be used to offset storage charges that may be made to the shipping line.
3. In relation to Article 54 of the Law on Customs, ensure that the relevant officials are aware of this process and that it is being implemented according to the timelines provided within the Law.

## 13. SPECIAL ECONOMIC ZONES

### *Communication between public bodies, SEZs, and investors*

A recent working paper published by the Asian Development Bank<sup>6</sup> concluded that Cambodia's Special Economic Zones have "attracted significant levels of foreign investment into Cambodia that would not have been present otherwise, creating around 68,000 jobs, with equal or better pay and better prospects than the alternatives that would otherwise have existed". This success was attributed in part to the Royal Government's decision to permit private sector developers to establish and manage the zones, which the ADB considers more efficient than publically managed SEZs.

A majority of investors within SEZs are of foreign origin and SEZ operators can play an important role in facilitating communication between these foreign investors and government bodies. For example, during our consultations for the White Book we have heard of SEZ management providing an effective intermediary role between investors and GDCE in cases where the investor was unaware of having incorrectly followed customs processes and therefore misunderstood the reason for its Customs applications being rejected.

SEZs have government officials on-site and the principle of a one-stop service for investors to work with the Royal Government is already engrained. EuroCham believes that this somewhat unique environment provides opportunity not only for enhanced communication between public bodies, SEZ operators, and investors, but also for trialing new communication platforms that, if proving useful, can be adopted throughout the rest of the Kingdom.

There is economic benefit to be gained by ensuring effective dialogue between public bodies, SEZ operators, and investors. When strong communication between these stakeholders is incorporated into day-to-day operations, investors will have a stronger understanding of relevant laws and processes and can follow them more efficiently. Obstacles to doing business can be more quickly identified and addressed, which in turn supports the efficient movement of goods in support of manufacturing activities. Demonstrating capacity for strong levels of communication between these entities will have a positive impact upon prospective investors' assessment of the business environment within Cambodia.

*Issue Description*

*Potential gains/concerns for Cambodia*

## 13. SPECIAL ECONOMIC ZONES

*Communication between public bodies, SEZs, and investors (...continued)*

### *Recommendations*

✓ Require SEZs to facilitate regular meetings between investors, GDCE, and other relevant public bodies and consider trialing new tools for public-private collaboration within SEZs

1. We suggest that the Royal Government require SEZs to facilitate regular meetings between investors, GDCE, and other relevant public bodies.
2. Where SEZ operators are willing, consider benefiting from the ‘limited environment’ of the SEZ to trial-run new communication tools. For example, in implementing the National Single Window, Cambodia is seeking to harmonize and integrate online systems facilitating processes such as business registration and the uploading of Customs documents (ASYCUDA). This concept of systems integration and coordinated communication could be further expanded to include, for example, investors’ interactions with the Council for the Development of Cambodia, the Ministry of Economy and Finance, the Ministry of Land Management, Urban Planning and Construction, or the Ministry of Labor and Vocational Training. Within the relatively manageable scope of the SEZ, practical user-friendly systems management programs can be conceptualized and trialed in coordination with the private sector in order to make it easier for investors to work alongside the Royal Government. EuroCham will be happy to facilitate this process by promoting dialogue between the Royal Government and our members.



# AUTOMOTIVE

**E**uroCham is enthusiastic about the progress made in the Cambodian automotive sector in recent years. In a country that had hardly any private automobiles 20 years ago, a stable political landscape and two decades of rapid economic growth have created a sizable, untapped pool of customers for automobile vendors. There were approximately 55,000 cars and trucks introduced to the roads in 2015, representing a 10% year-on-year increase in the number of vehicles being sold in the Kingdom.

While the majority of cars in Cambodia are second-hand imports of American or Japanese origin, official dealerships emerged in 2012 as familiar global brands began recognizing the potential of the Cambodian market. In partnership with local companies, Audi, BMW, MG, Mercedes Benz, Jaguar, Land Rover, Rolls-Royce, Porsche and Volkswagen have established themselves within the Kingdom. The increasing presence of European automobile brands in Cambodia will provide significant benefits to the national economy by fostering investment, creating jobs, and contributing to government tax revenues. Indeed, EuroCham automotive members alone have invested over \$100,000,000

in their showrooms, service facilities, and ongoing training of their Cambodian staff.

EuroCham looks forward to engaging the Royal Government through this White Book in both the opportunities and challenges that our automotive members have encountered during their first years in the Kingdom. We're also happy to collaborate and discuss our proposals further with likeminded associations such as the Cambodian Automotive Industry Federation (CAIF).

Our recommendations focus on three specific areas:

1. import regulations,
2. consumer protection, and
3. taxation policy.

However, we would like to take this opportunity to outline our vision for the Cambodian market in the longer run. At a top level, we seek to work alongside the Royal Government in order to help the Cambodian automotive market transition from a predominantly informal, unregulated market to a formalized market with effective regulations and quality assurance that has a positive effect for

the Royal Government, for consumers and for authorized dealers alike. These include:

**For the Royal Government:**

- The potential to significantly increase tax revenue collection from the automotive sector
- Incentivize greater levels of investment in the sector and create skilled jobs within showrooms, aftermarket services and, potentially, parts manufacturing.
- Contribution to the Royal Government’s goals of preparing low-carbon policies<sup>7</sup> and encouraging efficient use of energy<sup>2</sup>.
- Providing the necessary oversight and transparency in order to implement ASEAN agreements to harmonize standards, including any Mutual Recognition Agreements (MRA) agreed with the ASEAN Consultative Committee for Standards and Quality Automotive Product Working Group (ACCSQ-APWG)

**For consumers:**

- Protection against unknowingly exposing themselves to safety risks by driving cars

deemed not roadworthy in other countries.

- Greater access to warranties and aftermarket services, offering greater long-term value that unauthorized importers cannot provide.

**For authorized dealerships:**

- A level playing field that enables fair and transparent market competition, increasing participation in the economy.
- Better ability to track vehicle ownership which is important in the case of a product recall to protect consumer safety.

For these considerable benefits to be realized, a coordinated effort would be needed between both public and private sectors in order to build the core infrastructural and regulatory components that can facilitate the development of a successful automobile market in Cambodia. These include:

- 1. Physical Infrastructure.** Consumer demand can be generated through the development of a greater number and quality of roads, which will enable more cars to be driven. EuroCham recognizes and welcomes the Royal Government’s ongoing efforts to invest in roads, to reduce traffic

congestion, and to coordinate road upgrades with other investments in transport infrastructure<sup>8</sup>.

**2. Financing and leasing.** At present, only a limited pool of potential consumers has access to sufficient funds to invest in a new automobile from an authorized dealer. In order to make automobiles more accessible to greater segments of the population, there is a recognized need to develop a regulatory framework that will enable leasing and hire-purchase agreements. Such a framework entails coordinating policies across the areas of accounting, legal, tax and bankruptcy.

**3. Retail channels.** There is a need for a healthy mix of new and used car outlets. While stressing the benefits of purchasing new cars from an authorized dealer, we also recognize the need for a second-hand market in order to improve accessibility and affordability. However, the second-hand car market needs to be effectively regulated - a 2012 study inspected cars at 30

used-car dealerships around Phnom Penh and found 40% of vehicles to be insurance write-offs considered not roadworthy in their country of origin. Furthermore, a full 80% had had their odometers tampered with so as to misrepresent the vehicle's mileage<sup>9</sup>. With this in mind, it is worth recognizing that Cambodia has the lowest used car import restrictions within ASEAN (see chart below)<sup>10</sup>.

**4. Taxation policy.** The automotive industry has come to represent a significant proportion of Cambodia's total tax revenues. In 2014, passenger cars and commercial vehicles accounted for 23% of the value of all imports into Cambodia and generated over 250 million USD in tax revenues<sup>11</sup>. While recognizing and welcoming the contributions that taxes on vehicles sold in Cambodia can make to the development of the country, for the automobile market to develop further there is a need for a tax and fee policy that strikes a balance between tax collection and

COUNTRY	USED CAR IMPORT RESTRICTION	REMARK	
Indonesia	completely prohibited		
Laos	completely prohibited		
Thailand	prohibited with exception	Approved only for government / re-export / private usage	
Philippines	prohibited with exception	Approved only for private usage with permission	
Vietnam	huge import tax (70%-80%)	Impossible to run used-car import business practically	
Malaysia	need import license	Prohibited for importation for selling/business form Jan 2016	
Singapore	within 3 years aged / euro 3	In addition, need to have several inspection to get approval	
Brunei	restriction for volume and car-age	Volume: up to 20% of TTL registration last year Car-age: within 3-4 yrs for passenger/commercial car	
Myanmar	need import license (new & used)	Need to scrap/replace the old car (more than 20 years) to get import license for both new car and used car	
<b>Cambodia</b>	<b>no restriction</b>	<b>Superficial vehicle check only</b>	

Source: Cambodia Automotive Industry Federation (CAIF)

consumer affordability. This does not necessarily mean a net reduction in tax revenues for the Royal Government from the automobile industry – a higher level of regulation and transparency would enable greater tax collection from second-hand car imports and used car sales, which represent over 90% of annual automobile sales in Cambodia.

**5. Environmental and recycling.** The Committee welcomes the vision laid out in the Climate Change Strategic Plan 2013-2024 – that “Cambodia develops towards a green, low-carbon, climate-resilient, equitable, sustainable and knowledge-based society”. Better regulation of second-hand and ‘junkier’ imports is an important part of realizing this vision – older vehicles are generally less fuel-efficient and release more pollutants into the atmosphere. Furthermore, within the automotive market, environmentally-conscious recycling and disposal of car batteries makes a large difference to the environmental impact of the industry and requires effective oversight.

**6. Consumer protection.** Cambodia’s Law on the Management of Quality and Safety of Products and Service (2001) contains a number of provisions designed to protect consumers from products that could potentially cause them harm. In an informal economy, there is no way of monitoring the safety standards of products being sold. In particular, and noting the findings of the market study referenced above, we are concerned by the importation of written-off cars and by

cars assembled from a variety of parts imported as scrap. Such vehicles have inherent structural deficiencies which can prove fatal or very serious for the consumer in the event of an accident. Accordingly, we encourage the implementation of mandatory safety checks for all cars on the road and we welcome the recent statement by the General Department of Customs and Excise recognizing the dangers inherent in vehicles that are imported as scrap metal and unofficially assembled in Cambodian garages<sup>12</sup>. Such initiatives contribute to the development of a safe and secure automotive market.

**7. Parts availability.** Owners of automobiles sold by unauthorized dealers at times find themselves frustrated by the lack of available parts. Whereas authorized dealerships offer full warranties and aftermarket services, there are no such guarantees in the informal market. Furthermore, some consumers are unaware that manufacturers design and build different vehicles for different parts of the world in order to cater for variables such as climate and fuel quality. As such, even a branded part may be inappropriate for the vehicle at hand and can lead to sub-optimal performance or reliability issues. The development of reliable and regulated aftermarket services for both new and second-hand cars is thus a further requirement for long-term growth of the market.

With these longer-term objectives in mind, we respectfully request the Royal Government to consider the following recommendations.

## 14. IMPORT REGULATIONS

### *Importation of vehicles not suitable for the Cambodian environment*

#### *Issue Description*

At present there are insufficient regulations governing the type, age, origin, and/or condition of vehicles imported into the country. As a result, there are many vehicles on the roads that are not suitable for the Cambodian environment and, in some cases, that pose a safety risk to drivers, their passengers, and those around them. Examples of such vehicles include:

- Cars subject to insurance write-off. Many vehicles on the road today were involved in accidents overseas, written off by insurance companies, sold as scrap metal, and exported to Cambodia for repair/assembly into a working car. Insurance companies write off cars not just because they are too expensive to repair, but also because they may have serious structural issues and be unsafe to drive – even if repaired. Buyers of such cars cannot be aware of the history of the vehicle nor be trained to identify signs of accident repair.
- Cars not designed for the Cambodian context. The majority of vehicles imported into Cambodia by non-authorized importers source their vehicles from countries using fuel that meets Euro 5 or Euro 6 standards, which is a fuel with a very low level of sulfur and impurities. Fuel currently available in Cambodia is suitable for vehicles with Euro 3 or Euro 4 engines. Authorized importers work with this knowledge to provide vehicles adapted to the Cambodian environment with suitable engines and exhaust systems so that the vehicles perform properly once imported. Other alterations include enhanced air-conditioning systems and suspension modifications to increase ride height (distance between the ground and the underside of the car). Of particular concern is the fact that, if cars have engines designed for Euro 5 or Euro 6 fuel, they are very likely to encounter poor engine performance and engine stalling when driven in Cambodia. Indeed, engines fitted with selective catalytic reduction systems (using diesel exhaust fluids such as AdBlue to reduce harmful emissions) will stop working completely if not equipped with the correct fuels. Customers are generally unaware of this issue and are often shocked and angry when faced with a quotation to undergo expensive work to get a Euro 5 or Euro 6 engine back into working order.
- Stolen cars. Authorized dealers often are the only source of replacement keys and on-board computers. They are required to verify vehicle ownership before replacing theft-sensitive parts. If a customer comes to an authorized workshop requesting a new key, it is possible they may be turned away if there is a record that the car was reported stolen. Again, without reliable checks at the point of importation, consumers buying from a non-authorized importer have no way of knowing whether the vehicle has been reported stolen. Indeed, even grey market dealers themselves have no real way of verifying whether or not a car has been stolen.

The lack of measures to restrict the importation of vehicles not suitable for the Cambodian environment makes Cambodian vehicles and roads less safe. In addition to the inherent safety risks, consumers purchasing cars that have not been sufficiently regulated at the point of import will most probably encounter issues of poor engine performance, fake mileage readings and lack of service support.

As Cambodia does not have a domestic automobile production industry, the implementation of effective measures to prevent the importation of vehicles not suitable for the Cambodian environment would ensure that only safe and reliable cars are available for sale in Cambodia. Consumers would still have access to imported used cars, but the vehicles imported would be suitable for Cambodia and less likely to encounter the safety and performance issues identified above.

Consumers would be protected against unknowingly driving vehicles that have been deemed unsafe in their country of origin. Prospective buyers would have the peace-of-mind of knowing that vehicles sold in Cambodia are not listed as stolen and will not require expensive repairs caused by their incompatibility with current Cambodian fuel quality levels.

Safer cars on the road would contribute to the objective of Cambodia's National Road Safety Committee to halve road fatalities by 2020. Furthermore, a better-regulated and more context-appropriate automobile market in Cambodia will increase confidence in the industry for both consumers and investors.

In order to realize these benefits, we request that the Royal Government considers implementing the following measures:

1. For new car imports, require a "Certificate of Conformity" from the manufacturer. This will insure that all new cars are suitable to operate in Cambodia.
2. For used car imports, limit imports to vehicles that were designed to operate on Euro 3 or Euro 4 quality fuel. Improvements to Cambodia's fuel quality could see this regulation reviewed.
3. Introduce and effectively implement a ban on the importation of flood-damaged cars, stolen cars, insurance write-offs, and other conditions that result in unsafe vehicles being on the road.

## *Potential gains/concerns for Cambodia*

## *Recommendations*

- ✓ Implement regulatory measures to prevent the import of cars unsuitable for the Cambodian environment

## 15. CONSUMER PROTECTION

### *Enabling authorized dealerships to implement service measures and product recalls*

#### *Issue Description*

Every global manufacturer has a strict product-quality monitoring regime which includes monitoring of safety-related issues after production and sale. It is routine practice for manufacturers to issue a “product recall” – in effect announcing a safety-related issue, identifying affected vehicles, and notifying customers to return to authorized workshops for repair. As standard practice, authorized dealers check each vehicle visiting an authorized workshop to ascertain if there are any outstanding service measures/recalls waiting to be performed. The cost of repair work, both labor and parts, is generally covered by the manufacturer at no cost to the owner. However, owing to low levels of regulation of automobile imports and large number of vehicles imported by non-authorized dealers, authorized dealers are unaware of what vehicles are in Cambodia and are unable to provide timely notification in the event a vehicle is included in a manufacturer-announced service measure or recall. Failure to perform service measures means that potentially un-roadworthy vehicles remain in use.

#### *Potential gains/concerns for Cambodia*

In a better-regulated market, authorized dealers would have greater knowledge of vehicles on the road in Cambodia so as to be able to implement manufacturer service measures and recalls on a timely basis. This would contribute to ensuring greater safety on Cambodian roads, with benefits as described in the first recommendation of this section.

#### *Recommendations*

Require the Department of Land Transport to notify authorized distributors, on a quarterly basis, of the contact information for all new vehicle registrations or used-vehicle transfers. Information to be provided should include: vehicle brand, model, model year, vehicle identification number (VIN), customer name, address, and telephone number.

- ✓ Require the Department of Land Transport to notify authorized distributors, on a quarterly basis, of the contact information for all new vehicle registrations or used-vehicle transfers for product recall purposes

## 15. CONSUMER PROTECTION

### *Implementation of existing technical check requirements*

Article 48 of the Road Traffic Law (2007) provides clear guidance on the intervals within which different types of land vehicle are required to undergo technical checks administered by the Ministry of Public Works and Transport. The type of technical checks required are determined by Prakas.

However, many cars encountered on the road or coming in for servicing at authorized dealerships have not been subject to such technical checks. This is in part due to the aforementioned lack of regulation of automobile imports, which makes it more difficult to document which cars are on the road and monitor when they are due for technical checks. It is also in part to a lack of awareness amongst the public about the requirement for vehicles beyond a certain age to undergo technical checks.

Effective implementation of the requirement for technical checks on used vehicles beyond a certain age would provide the Ministry of Public Works and Transport greater oversight over what cars are on the road, and would ensure that unsafe vehicles are quickly identified so that repairs can be undertaken or, if beyond repair, the vehicle can be removed from the roads. This would contribute to ensuring greater safety on Cambodian roads, with benefits as described in the first recommendation of this section.

Require a 'certificate of roadworthiness', demonstrating that a vehicle has passed the mandated technical checks, as a prerequisite for obtaining a vehicle tax certificate. The vehicle tax certificate is displayed on the car and it is easy for traffic police to identify cars driving without such certification. Drivers perceive a high level of monitoring of tax certificates by traffic police and therefore most drivers do undergo the necessary processes to obtain vehicular tax certificates. Accordingly, if drivers are unable to obtain a vehicular tax certificate without a 'certificate of roadworthiness', they will be more likely to voluntarily bring in their cars for technical checks.

In many countries a fee is charged for the administration of such technical checks, thus an increase in the number of technical checks being conducted would not need to consume the financial resources of the Ministry of Public Works and Transport.

#### *Issue Description*

#### *Potential gains/concerns for Cambodia*

#### *Recommendations*

- ✓ Better implement existing technical check requirements

## 16. TAXATION POLICY

### *Taxation policy as an instrument for developing the automotive sector*

#### *Issue Description*

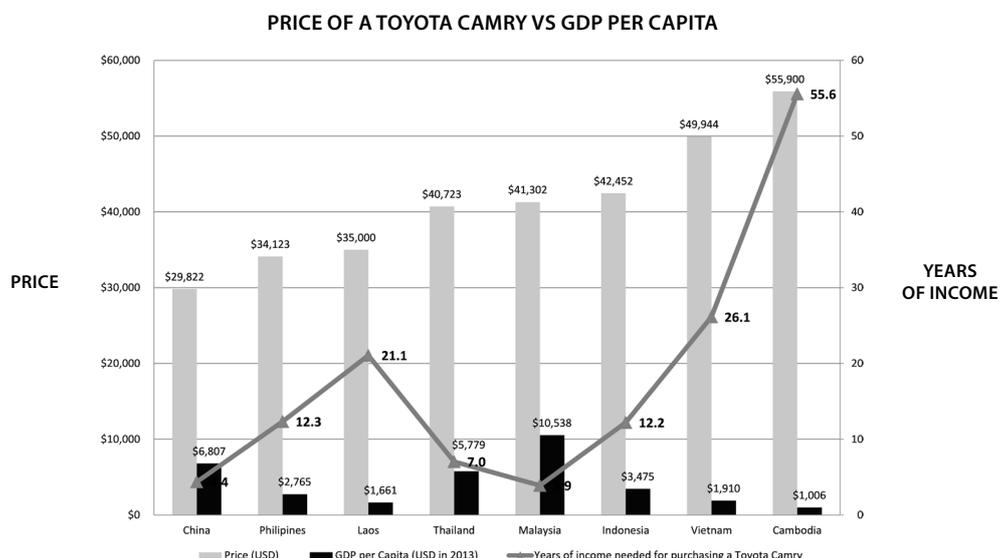
The Cambodian automotive sector is currently comprised of three types of vendors:

1. Authorized distributors who pay the required import tariffs and VAT and sell only cars that are appropriate for the Cambodian market.
2. Second-hand dealers of legitimately-imported used cars, or cars imported as new and subsequently sold by the original owner. The VAT compliance of these vendors is variable.
3. 'Grey market' dealers selling unofficially imported second-hand cars or cars rebuilt from scrap parts. These vendors contribute little if any taxes to the Royal Government and, furthermore, put unsuitable cars onto Cambodian roads.

By all approximations, this third 'grey market' category accounts for an overwhelming proportion of the market. Around 55,000 automobiles are added to Cambodian roads each year while, in 2015, there were approximately 4,000 new cars officially imported into Cambodia, which would represent less than 10% of cars being added to the roads.

That new cars represent less than 10% of the market is in part due to the high levels of taxation levied on imported new cars. When all charges are taken into account, the total tariffs for importing new passenger cars from outside of ASEAN into Cambodia represent 122.75% of the value of the vehicle. This rate will increase even further with the higher Special Tax rates mandated within Sub-Decree Number 192 ANKR.BK on the Adjustment of Customs Duty and Excise Tax. New cars account for a disproportionate amount of the total taxes collected on automobile sales, which in turn account for one third of total government tax collection.

Under the current taxation system, high import tariffs on automobiles contribute to an affordability problem in the Kingdom – the graph below compares the price of a new Toyota Camry in Cambodia and other countries in the region and demonstrates that, despite having the lowest GDP per capita of the countries listed, Cambodia also has the highest retail price for a car. Accordingly, the relative cost of the car (ie. The ratio of price : GDP per capita) is significantly higher in Cambodia than any of the other countries.



Thus while taxes on new automobiles are an important source of public funds, they also render new automobiles unaffordable to most Cambodians. Accordingly, the vast majority of cars being sold in Cambodia are from the grey market and generate little or no tax revenue.

Optimizing a national taxation policy for automobiles requires a strong understanding of the industry and the many variables that influence consumer purchasing. Higher taxes is not always an effective tool for increasing tax revenues, as was seen in Vietnam in 2011 where a 5% increase in automobile registration tax rates led to a 30% reduction in new car sales and a reduction in revenues for the state. However, Vietnam’s new car market is now booming, having increased by 43% between 2013 and 2014 according to the Vietnam Automobile Manufacturers’ Association<sup>13</sup>. Such growth can be attributed not only to economic growth and rapid urbanization, but in large part to the country’s strong regulation of second-hand imports.

Our goal is to work with the Royal Government to develop a standardized, transparent tax and duty structure in which all parties are held to the same rules, action is taken against those who do not comply with Cambodian laws, and the automotive sector as a whole contributes a greater net amount to state revenues.

The Royal Government’s Industrial Development Policy recognizes that an optimized taxation system carries multiple benefits, expressing a commitment to “Review the tax and customs system by transforming it into a tool not only for revenue collection but also for promoting industrial development”<sup>14</sup>

*Potential gains/concerns for Cambodia*

The same principle applies within a consumer market such as automobiles. We believe that the taxation system for automobiles could be optimized in order to transition from the current status quo to a scenario in which only safe and context-appropriate cars are being sold in Cambodia, there are higher levels of tax compliance, and the policy framework is laid for the industry to grow and make greater contributions to the Cambodian economy.

The Royal Government would greatly increase its tax revenues by having a greater proportion of cars being sold by tax-compliant vendors. Presently, over 90% of cars sold in Cambodia are second-hand imports or cars reassembled from scrap metal and often sold by vendors who are not tax-compliant. If there were greater regulation to prevent the practice of selling reassembled cars, a greater proportion of cars being sold in Cambodia would be subject to higher import tax. The example below compares the revenue that the Royal Government currently collects from an average 2.2 ton pickup reassembled from scrap metal versus one imported legitimately:

SCENARIO	CUMULATIVE TARIFFS	CUSTOMS EVALUATION	IMPORT TAXES DUE
Imported as scrap steel (code 7204.30.00)	17.7%	Assume \$360 USD/ton	\$140.18 USD
Imported as new (code 8704.10.13)	64.45%	\$28,500 USD	\$18,368.25 USD

In this scenario, the pickup truck imported as new generates **131 times more revenue** for the state. Accordingly, there are evident revenue collection opportunities to be realized in the formalization of the automotive sector.

## 16. TAXATION POLICY

### *Taxation policy as an instrument for developing the automotive sector (...continued)*

#### *Recommendations*

To achieve greater tax compliance, greater tax revenues, and safer cars on the road, we recommend the simultaneous implementation of the following measures:

1. Limitations on the importation of cars that are inappropriate for the Cambodian environment (see 'Import Regulations' above), which will improve safety and quality as well as reducing opportunities for vendors who are not tax-compliant;
2. A rationalization of the import tariff structure on new cars so that authorized distributors can be competitive at a lower retail price, which will make new cars affordable to a greater number of consumers. Coupled with more effective enforcement of VAT requirements against all automobile vendors including second-hand car dealers, which will eliminate an unfair advantage in favor of vendors who are not tax compliant.

It is important to reiterate that these measures can only work if they are simultaneous, as is evident in the hypothetical scenarios below:

#### **SCENARIO A**

"Improved regulation of imports without reforms to tax rates and enforcement"

##### *Impact on the market*

This would improve the safety and reliability of cars entering the Cambodian market but would make the used-car market more expensive while having no effect on the retail price of new cars. There would be a smaller price gap between authorized dealers and vendors of used cars which would likely increase the number of new-car sales (generating more revenue for the Royal Government). However, the overall affordability of automobiles would be negatively impacted; new car prices remain constant and used car prices increase.

##### *Impact on tax revenues*

This may not impact tax revenues too heavily as grey market cars being sold under the current system do not generate very much tax revenue anyway. Nonetheless, reduced affordability is not a positive development for consumers nor for the automobile industry as a whole.

#### **SCENARIO B**

"Tariff reductions without improved imports regulations"

##### *Impact on the market*

This would enable authorized distributors to offer cars at a lower price which would have a positive impact on new car sales. However, other vendors would continue to sell unofficially-imported and reassembled cars at significantly lower prices meaning that even with import tariff reductions and 10% VAT being paid by the second-hand dealers, authorized distributors would still struggle to be price-competitive and many unsuitable cars would continue to be introduced to Cambodia's roads.

##### *Impact on tax revenues*

While there would be a greater quantity of new car sales, tax revenue on each new car would be less due to tariff reductions. As grey market vendors retain their unfair advantages, it is unlikely that the increase in the number of new cars sold would be able to offset the lost revenue from the tariff reduction.

### *Impact on the market*

As in scenario B, authorized distributors would be able to offer their cars at a lower price, which would be welcomed by consumers and authorized distributors alike. With better regulation of cars imported into the country and with vendors of legitimately-imported used cars paying appropriate import tariffs and VAT there would be a less distorted gap between the price of a new car and the price of a used car. Used cars would remain a cheaper option for consumers at the lower end of the economic scale but these used cars would be suitable for the Cambodian environment and would contribute to national tax revenues. New cars, which come with warranties and professional aftermarket care, would represent a more attractive economic proposition and sales would be likely to increase.

### *Impact on tax revenues*

Since the very cheapest cars currently on the market (unofficially imported and reassembled cars) would no longer be available in this scenario, there could be some initial reduction in the total number of cars being sold in Cambodia each year. However, these grey market vehicles, currently accounting for the vast majority of cars sold in Cambodia, contribute little to national tax collection so a reduction in their numbers would not result in a loss of revenue. The reduced price gap between new cars and used cars would be likely to incentivize consumers to make a longer-term investment in new cars, which now represent a more attractive economic proposition. The automobile sector as a whole could thus generate enough demand for new cars such that the quantity of sales would compensate for the reduction in tax collection per new car. Formalization of the used-car market would also contribute towards a net increase in tax collection from the sector.

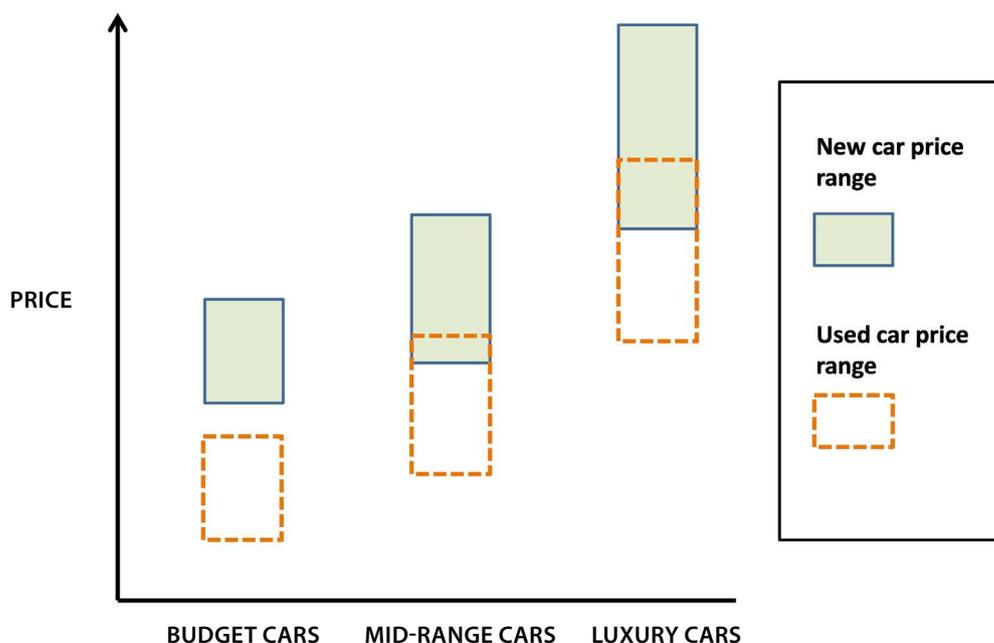
The Royal Government is quite rightly concerned about ensuring that automobiles are affordable for as much of the population as possible and this is a concern shared by the private sector. While we do propose removing the very lowest-priced cars from the market (reassembled vehicles that the Royal Government already recognizes as a safety risk and a means of avoiding taxes), we nonetheless believe that automobiles can be affordable in a better-regulated market. As the figure on the following page demonstrates, there is no binary distinction between ‘expensive’ new cars and ‘cheap’ used cars—amongst CAIF members there are authorized distributors offering new cars in all price brackets. In scenario C, we would see new cars being sold at a lower price than they are today and in competition with a healthy and tax-compliant used-car market. An adapted taxation policy could make new cars more obtainable to a greater proportion of the population and can be designed to complement an overall government strategy of incentivizing investment in safe, efficient and environmentally-friendly vehicles. At the same time, there would still be high levels of consumer choice and some consumers would opt for used cars in order to access a higher-category vehicle or pocket the savings. Notwithstanding the removal of the most unsafe reassembled cars (which are indeed the cheapest) from the market, affordability for the cheapest brand of safe used cars would be largely unaffected as the price of a car will ‘bottom out’ after a certain number of years of operation regardless of whether it was initially imported under a formal tax regime or not.

### **SCENARIO C**

“A simultaneous improvement of import regulations coupled with a rationalization of the tax structure”

## 16. TAXATION POLICY

*Taxation policy as an instrument for developing the automotive sector (...continued)*



- ✓ Rationalize taxation policy for automobiles so as to support the growth of the formal sector

Accordingly, in scenario C, the net effect is a **significantly higher proportion of total vehicles sold in Cambodia being brought into the formal economy**. There would be increased sales of new cars which would compensate for the reduction in taxes per vehicle, and the used-car market would offer a lower-priced option to consumers while still contributing to state revenues. We would thus expect an increase in net revenues for the Royal Government from taxation of the automobile industry, contributing to economic redistribution and infrastructure development which ultimately will further benefit the automotive sector.

In addition to the immediate budgetary benefits, Cambodia would benefit from having safer cars on the road and less casualties attributed to unsafe vehicles. Investment in newer cars and import regulations against unsuitable vehicles would result in less pollution of the local environment. Automotive brands, including those currently present in Cambodia as well as those yet to enter the market, will perceive a more level playing field which will encourage investment and the creation of skilled jobs.

We thus hope to have demonstrated how preventing the sale of reassembled cars and increasing the proportion of new cars and legitimately-imported second-hand cars on the market is a more effective way of increasing tax revenues than raising import taxes on new cars. An increase in Special Taxes on new cars as mandated by Sub-Decree Number 192 ANKR.BK on the Adjustment of Customs Duty and Excise Tax makes such cars less affordable and can prove counter-productive for tax collection purposes.



# DIGITAL *and* NEW TECHNOLOGIES

**D**uring consultation with our membership on the adoption of Digital and New Technologies within Cambodia, it has proven difficult to identify specific recommendations for actions that could be implemented in the short term to enhance the industry as a whole, which remains relatively small compared to regional neighbors. The impact of new technologies can be so far-reaching and affects so many different aspects of doing business that to successfully adapt them to economic benefit requires public and private sector initiatives across a range of legal, regulatory, technical, and educational fields.

As such, the first two recommendations within this chapter are more broad than most recommendations within the White Book.

Focusing first on the development of ICT-related industries in Cambodia, we highlight the need for and potential gains from deeper cooperation between government, private sector, and educational institutions and offer one central recommendation to reconsider the forum through which such strategic alignment is coordinated.

Our second recommendation focuses on e-commerce, a rapidly growing area within Cambodia that requires not only a legal and regulatory framework from the Royal Government but also cooperation between private sector stakeholders to collectively support the development of new market opportunities. To better understand this issue, EuroCham actively participates in the Cambodia eBusiness Working Group facilitated by the British Chamber of

Commerce. In this White Book we would like to present the initial findings of the Working Group's enquiries with the private sector as to the most pressing challenges facing e-commerce in the Kingdom. We hope that the Working Group can be of assistance to the Royal Government in developing e-commerce and its economic benefits in Cambodia.

Finally, we include a series of recommendations specific to the telecommunications sector, recognizing that the economic benefits derived from new technology business models are dependent upon continued support for Cambodia's growing levels of connectivity. As such, we highlight a number of issues relating to the newly-passed Telecommunications Law and other proposed reforms from the Ministry of Posts

and Telecommunications and Telecommunication Regulator of Cambodia that the Royal Government should seek to address in order to ensure the continued sustainable growth of the sector.

## 17. SUPPORTING NEW TECHNOLOGY INDUSTRIES

### *Fostering an internationally competitive landscape*

#### *Issue Description*

To support the development of a growth-creating ICT sector there must be strong coordination between government, private sector, and educational institutions.

Cambodia has considerable advantages that could be leveraged to create ICT jobs and benefit the national economy. Thanks to strong economic growth and good public and private investment in telecommunications infrastructure, Cambodia has the highest rate of internet connectivity growth in the Asia-Pacific region. Whereas 15 years ago limited infrastructure pushed costs to around 200USD per month for unlimited Internet service, digital technologies are now increasingly accessible to young Cambodians, facilitating the enhancement of baseline skills over the coming years. On the back of increasing connectivity and adoption of new technologies, Cambodian companies are able to offer related services such as developing software, building applications and outsourcing ICT services for foreign clients.

EuroCham and our partner associations wish to facilitate dialogue between these three essential components so as to support the greater development of the ICT sector in Cambodia. As an example of what can be achieved with effect public-private sector cooperation we take lessons from the Quang Trung Software City (QTSC) in Vietnam which has government bodies, private companies and six educational institutions (both public and private) all in one place and has 9000 students at any one time whose curriculums are developed alongside the on-site employers specifically to meet their requirements.

#### *Potential gains/concerns for Cambodia*

In addition to job creation and contribution to tax revenues, a strong ICT sector has positive effects for the national economy at large. Increasing prevalence of and competition between ICT service providers translates into more companies adopting tools to increase productivity and save time and costs, ultimately improving their own service offering and financial performance.

#### *Recommendations*

- ✓ Review the current format for public-private sector consultation within ICT

Our one central recommendation for the development of the ICT sector is to review the current format for public-private sector consultation within this domain. At the present time, there is no formalized framework for such consultation, though the Royal Government will occasionally request ad-hoc meetings with private sector representatives to, for example, review draft legislation of relevance to the sector. We understand that when requested to review draft legislation, the private sector is presented with a draft only upon entry into the consultation meeting; this does not provide sufficient time to thoroughly review the document or to consult with affected parties from the private sector.

Due to the aforementioned need to coordinate between government, private sector and educational institutions, we would suggest the inauguration of an annual 'IT Policy Forum' to provide opportunity for representatives from each of these three pillars to align their development objectives and strategies for the sector.

Some of the key subject areas that would need to be addressed via this forum include:

- **Education.** There is a need to reconsider how to build Cambodia's human resources within the ICT sector. The Kingdom currently produces around 4000-5000 ICT graduates per year from both public and private universities, though our understanding is that the quality of such courses is variable and only a small proportion of graduates have sufficient skills to match the needs of the private sector. Due to the small size of the pool of skilled Cambodian ICT professionals, salary expectations are high and there is significant employee turnover as companies compete to attract the limited number of top candidates. One issue that would need discussing in this forum would be the Ministry of Education's approval mechanism for curriculums. Our understanding is that the Ministry currently takes a somewhat conservative approach which can make it difficult for institutions wishing to offer more innovative and modern curriculums to have their proposals accepted. We would anticipate the forum providing opportunity for the private sector to offer more guidance on the type of skills that are required for modern-day ICT jobs.
- **Intellectual Property Rights.** Effective implementation of copyright and other intellectual property protection is an essential element of encouraging innovation within ICT. During our consultation with the private sector we learned that some companies were reluctant to invest too heavily in developing new software due to past experiences of having their programming code duplicated by rival companies. Investment is thus held back due to a lack of effective legal protections. The content of Cambodia's IPR laws are mostly to international standards though there is scope for greater understanding of how such laws can be applied to the specificities of the ICT sector.
- **Taxation.** Looking at some success stories abroad such as India and Thailand, strong ICT industries have been built upon tax structures that have prioritized the sector as a growth engine and facilitated its development not only with good educational programs but with supportive tax structures. The forum would provide opportunity to engage the Royal Government in developing a taxation policy that supports the growth of the ICT sector in Cambodia. Initial subject areas that would need some focus include:
  - › Import tariffs imposed upon ICT equipment, particularly relating to the introduction of new technologies which could have phased incentives so as to promote the proliferation of new digital services
  - › Some ambiguities within the Kingdom's laws such as, for example, the inability of outsourcing companies to confirm whether or not they should be required to pay VAT on their services (see 'Value Added Tax when exporting services' in the Taxation chapter).

## 18. E-COMMERCE

### *Development of an e-commerce framework*

#### *Issue Description*

Internet accessibility and affordability is increasing rapidly in Cambodia – the Ministry of Posts and Telecommunications expects the number of citizens with regular Internet access to almost double to 9.5 million by 2020. Over the coming years, enhanced connectivity will continue to create new opportunities and platforms for Cambodian businesses to reach customers. If effectively harnessed, these opportunities can significantly improve financial performance and contribute to economic growth.

Cambodia has a nascent e-commerce market with a number of online shopping portals, but the sector remains limited compared to other ASEAN countries due to three different types of obstacles:

- Technical and operational factors. Including the availability and price of telecommunications and Internet infrastructure, access to financial services, and logistical challenges relating to the delivery of goods. One of the most significant challenges is the need to introduce secure online payment gateways with adequate technical and legal protections; at present, e-commerce transactions in Cambodia take place mostly on a cash-on-delivery basis.
- Socio-economic and cultural factors. There is a need to raise awareness and educate people about the use of e-commerce platforms and, in particular, to build trust in such platforms in the eyes of consumers. For businesses, investment can be encouraged through the provision of accurate information about potential market size so as to inform business decisions and provide rationale for prospective investments in Cambodian e-commerce.
- Legal and regulatory factors. The development of the e-commerce sector requires a supporting body of laws and regulations to provide a framework for conducting such transactions in a way that provides adequate security and protection to consumers and businesses alike. This would include guidance on dispute resolution mechanisms and their enforcement, and guidance on consumer protection and privacy laws which need to be robust yet also industry-friendly. To this end the Royal Government is currently in the process of drafting an e-commerce Law.

To assist in addressing these obstacles, the Cambodia eBusiness Working Group was created in 2015 with assistance from the British Chamber of Commerce and input from the European Chamber of Commerce. The group is open to all interested stakeholders, and provides a forum to share information and collectively work on private sector initiatives that support the development of eBusiness and eCommerce within Cambodia.

The mission of the group is to:

- provide a forum for interested stakeholders to collaborate and to promote eBusiness and eCommerce in Cambodia;
- promote and build awareness of challenges and opportunities;
- coordinate with other stakeholders including government, non-profit and private sector groups;
- provide input to the draft eCommerce law; and
- create information resources.

The group has completed many working sessions over the latter half of 2015 and beginning of 2016 and has received input from over 100 leaders from the private sector to better understand the challenges and opportunities relating to e-commerce in Cambodia. The group intends to serve as a collective voice for the private sector and will welcome the opportunity to provide inputs to the Royal Government to assist in the development of this important field.

For a developing nation like Cambodia, e-commerce and e-business practices can be transformative to all stakeholders, including government and private sector actors. The Royal Government recognizes the growth potential offered by e-commerce, which the Ministry of Commerce has described as “the next big thing for our economy”<sup>15</sup>.

*Potential  
gains/concerns  
for Cambodia*

The successful development of the sector would benefit consumers who would see increased availability of (and competition to provide) products and services. For the private sector, adopting effective e-commerce strategies offers the promise of increased sales and revenues, improved cross-border marketing and trade, and reduced transaction and operational costs. In achieving these objectives, these companies will become sources of greater tax revenues for the Royal Government and provide additional economic benefits such as job creation.

## 18. E-COMMERCE

### *Development of an e-commerce framework (...continued)*

#### *Recommendations*

The Working Group hopes to have opportunity to engage with the Royal Government on a substantive level to express the needs of the private sector in order to help the e-commerce market in Cambodia progress.

We recommend that the Royal Government recognize the benefits that can be gained by incorporating the views of the Working Group into its e-commerce strategy and, in particular, to benefit from the expertise and experience embedded within the Group.

✓ Engage the Cambodia eBusiness Working Group to support the growth of e-commerce

The Working Group has identified a number of private sector initiatives that it intends to carry out over the coming months. We request that the Royal Government support these initiatives, providing information and assistance where it is able to do so, and taking heed of the Group's findings. It is intended that each project will have an immediate impact on e-business and e-commerce readiness and investment in Cambodia:

- A Market Evaluation Study of e-commerce current and potential market size, readiness, and opportunities in Cambodia.
- A report on “The state of e-commerce in Cambodia 2015: Market Size, Readiness and Opportunities”, based on the Market Evaluation Study findings.
- Industry Self-Governance “codes of conduct” to improve business and consumer trust of e-commerce and e-business, specifically to cover important areas of conduct, such as returns policies, that are not covered by the laws of Cambodia.
- A “House Code Delivery Location Initiative” to create an open-source database of meta-information to improve the ease of identifying and finding delivery locations, created and maintained by the private sector for use by all.
- A “Training and Education Survey” to provide business with information on where and how to improve staff e-business and e-commerce skills, which was identified by the private sector as a key barrier to acceleration of e-commerce in Cambodia.

## 19. TELECOMMUNICATIONS

### *Ensuring regulatory stability to support investment in the telecommunications sector*

The Royal Government passed a new Telecommunications Law in December 2015 that includes a requirement for all businesses within the telecommunications sector to re-apply for their operating licenses. The details of the application process are yet to be determined and will be issued via Prakas, in all likelihood before the end of 2016. Most companies within the sector have existing long-term licenses and now find themselves subject to a certain amount of regulatory risk as they cannot be sure of whether the rights and obligations of these existing licenses will be honored under the new licensing system.

To attract investment in telecommunications and in Cambodia more generally, it is important that the Royal Government provide investors a high level of regulatory stability and predictability. If the provisions of the new licensing system were to be significantly less advantageous to existing operators than the current conditions under which they have been working, this could have an impact upon the image of Cambodia as an investment destination across all sectors as prospective investors will perceive higher risk of unfavorable regulatory changes.

We recommend that the Ministry of Posts and Telecommunications engage in substantive consultation with the private sector prior to implementation of the re-licensing process. In formulating the provisions of the new licensing system, we recommend the Ministry to consider that the new terms should honor terms agreed with existing investors and their net effect should not be to place excessive additional regulatory and cost burdens upon them. Were taxes and regulatory costs to be significantly increased this would make telecommunications services less affordable to consumers and could have a negative impact upon the sustainability of the sector.

#### *Issue Description*

#### *Potential gains/concerns for Cambodia*

#### *Recommendations*

- ✓ Engage in substantive consultation with the private sector prior to implementation of the telecommunications re-licensing process

## 19. TELECOMMUNICATIONS

### *Administration of the proposed Universal Service Obligation and Capacity Building Fund*

#### *Issue Description*

We understand The Ministry of Posts and Telecommunications will be introducing a 'Universal Service Obligation' (USO) requiring telecommunications companies to remit to the Royal Government 2% of gross revenues related to telecommunications activity (with provisions for deductions). Funds raised from the USO should in principle be used to lay the foundation for future growth within the industry by financing infrastructural developments and network expansion in more remote locations where it would otherwise be less economically viable for communications providers to establish services due to high set-up costs and the lower spending power of consumers. The new law also requires an additional 1% of gross revenues related to telecommunication activity for Capacity Building, Research and Development.

At present the private sector has no clear idea of how the USO and Capacity Building schemes will be administered and how it may be used as a tool to enhance the telecommunications industry in Cambodia. The details will be issued via Sub-decree, in all likelihood before the end of 2016.

#### *Potential gains/concerns for Cambodia*

A USO scheme, if effectively managed and administrated, can serve as a useful tool in raising funds for projects of collective benefit such as improving connectivity in rural areas and increasing Internet speeds through infrastructural upgrades. Indeed, it can help to coordinate public and private sector initiatives aimed at developing underserved areas. In many countries, telecommunications companies are able to claim back the entirety of their USO fees due on the basis of their contribution to service expansion and sectorial development.

If, however, the money raised by the USO scheme is diverted away from the telecommunications sector towards other government activities, telecommunications businesses incur additional costs without gaining any additional benefits or growth opportunities. Such a scenario is likely to hinder further investment and have a negative impact upon sustainable growth within the telecommunications sector.

#### *Recommendations*

The private sector welcomes the opportunity to contribute its fair share to national economic development. This being the case, it is important that the newly-proposed USO and Capacity Building schemes are subject to substantive consultation with the private sector to ensure that they are configured to support sustainable industry growth, improve ICT development, bridge the digital divide and increase levels of rural connectivity.

- ✓ Structure a future Universal Service Obligation scheme to support the growth of the sector

In support of these development goals, each scheme must be built around principles of good governance encompassing transparent fund management, periodic reporting and audits, and clear mechanisms for operators to utilize the funds. If both funds are structured this way, telecommunications businesses will incur additional costs through the levies yet these costs will be at least partly compensated by the new opportunities for revenue generation opened up by the projects funded by the scheme.

## 19. TELECOMMUNICATIONS

### *Allocation of spectrum*

The Royal Government reserves the right to allocate and assign use of defined wireless spectrum bands to telecommunication companies. At present there are many private sector entities holding spectrum in Cambodia, though some of these entities hold the spectrum exclusively while not actually providing any services. Wireless spectrum is a scarce natural resource and only a narrow range of this spectrum is suitable to deliver reliable wireless signals; a system of allocation that does not ensure effective utilization hinders the development of telecommunications services. The new Telecommunications Law requires a new Sub-decree to be developed to cover spectrum planning, allocation, assignment and monitoring.

It is our understanding that the Royal Government is considering introducing spectrum auctions which would allocate bands of spectrum via a competitive bidding process. This is an allocation method that is common in other countries. However, such auctions need to be subject to reasonable controls so as to avoid inflation of the price by bidders who do not have the financial capabilities to pay the prices that they bid or the competencies to rollout services using the spectrum.

The telecommunications sector in Cambodia would benefit from the Royal Government ensuring that spectrum is in the hands of service providers who will actually make use of it as these service-providing companies contribute more to tax revenues, job creation and increasing connectivity. Conversely, the hoarding of spectrum assets without offering services represents an opportunity loss for the Royal Government in the realization of its economic development objectives.

Should the Royal Government decide to introduce spectrum auctions, we would recommend that bidders be required to go through a pre-bidding procedure before participating in the auction from the Ministry of Posts and Telecommunications. Only those companies able to demonstrate serious intent to offer services on the spectrum that they are bidding on, for example by offering rollout plans and demonstrations of financial capacity, should be granted permission to participate in the bidding process. Furthermore, as part of the upcoming consultation on the Sub-decree, minimal rollout obligations or similar controls should be considered to deter non-serious players while more spectrum release for mobile services should be facilitated to support Cambodia's digital inclusion agenda.

#### *Issue Description*

#### *Potential gains/concerns for Cambodia*

#### *Recommendations*

- ✓ Introduce a screening process for bidders on future spectrum auctions

## 19. TELECOMMUNICATIONS

### *Calculation of taxable revenues within telecommunications*

#### *Issue Description*

At present in Cambodia, the only way to buy airtime (phone credit) is via scratch cards, and the sale value of these scratch cards is used by the General Department of Taxation as the basis for calculating the taxable revenues of telecommunications.

This method of calculation is arguably inappropriate for certain types of business activity that contemporary telecommunications businesses engage in, particularly those involving the distribution of products and services via mobile devices. If, for example, a Cambodian telecommunications provider were to partner with a digital distribution platform so that Cambodian consumers could use their airtime to pay for mobile applications, the company would be taxed on the entirety of the value of the airtime despite receiving only a small percentage of that value as a commission from their partner.

As the market grows and the volume of transactions of this nature increases, the profit margin on each transaction tends to decrease. Therefore, the present revenue calculation model may in the longer term render certain types of business partnership that are common in other countries to be unviable in Cambodia.

#### *Potential gains/concerns for Cambodia*

Where the GDT's calculation methods make it unviable for Cambodian telecommunications companies to engage in distribution activities in partnership with other businesses, this reduces consumers' access to these products and services and therefore represents a hindrance to economic growth.

Cambodia is already witnessing some of the benefits that mobile distribution of products and services can have. For example, telecommunication companies have played a major role in increasing the uptake of life insurance policies and personal accident coverage amongst the population and thereby contributed to increasing levels of financial security for many Cambodian families.

As discussed in the e-commerce section above, increasing levels of connectivity will over the coming years create plentiful new business opportunities within Cambodia. The Kingdom's tax regime needs to reflect the realities of contemporary business practices so that it can be directed as a tool to encourage rather than hinder product and service innovation in support of economic growth.

#### *Recommendations*

We request that the General Department of Taxation seek consultation with the private sector to determine a more representative way of calculating taxable revenues for telecommunications companies.

- ✓ Review the method of calculating taxable revenues for telecommunications companies



# GREEN BUSINESS

**E**uroCham is proud that our membership includes a number of green business pioneers taking a leading role in promoting environmentally-friendly production and best business practices in Cambodia. We welcome the Royal Government's forward-looking approach and recognition of the benefits that renewable energy sources and sustainable business practices can provide to Cambodia's long-term sustainable development and economic growth.

From a policy perspective, The Royal Government of Cambodia has already recognized the importance of sustainable energy and best practices in private sector governance. The National Strategic Development Plan 2014-2018—which implements the Royal Government's third phase of the “Rectangular Strategy” for growth, employment, equity and efficiency—affirms the Royal Government's intention to strengthen corporate governance so as promote the health and growth of corporate social responsibility<sup>16</sup>. In addition, it recognizes environmentally-conscious policies as a prerequisite of sustainable economic growth and social development<sup>17</sup> while expressing a commitment to sustainably managing natural resources<sup>18</sup> and supporting the development

of new and clean energy sources<sup>19</sup>. Furthermore, Cambodia's National Energy Policy is oriented towards providing reliable, affordable energy services to all end users in the most sustainable manner, thereby raising living standards, making the economy more competitive, decreasing dependence on foreign fuel imports, and protecting the Kingdom's natural beauty.

EuroCham seeks to support the Royal Government in implementing these strategies. Through our Green Business advocacy committee, we have already had substantive dialogue with the Royal Government about the ways in which the Kingdom's laws and regulatory framework can best support the development of a sustainable energy sector and promote the adoption and implementation of green business practices. We have a positive outlook towards the development of green business within Cambodia – the Royal Government already demonstrates an exemplary attitude and practical approach to this area, being willing to listen and giving due consideration to practical proposals to remove obstacles faced by our members. As Cambodia continues to develop its infrastructure it has the opportunity and potential to become a showcase for green business practices within Southeast Asia.

Our recommendations for the Royal Government within this sector are focused on four core topics:

- **Renewable energy sources.** There is already strong private-sector involvement in renewable energy sources, particularly in solar energy and sustainable biomass. However, these sectors need to be cost-competitive against less sustainable energy sources if they are to prosper in Cambodia. In particular, we welcome the foresight demonstrated by the Ministry of Mines and Energy and Ministry of Economy and Finance in agreeing to provide fiscal incentives to support the development and formalization of the sustainable biomass sector, from which our members have benefited.
- **Sustainable business practices.** Truly sustainable development must recognize the interplay between environmental and social risks. Indeed, the latest sustainability research finds that social responsibility and environmental responsibility actually go hand in hand. For example, many social issues (relating to livelihoods, health, education) derive from a lack of environmental

responsibility (bad land use management, lack of waste water treatment, projects affecting fisheries and other food sources), and vice-versa. As such, we welcome the development of comprehensive Environmental Impact Assessment legislation in Cambodia and it is our hope that this is implemented fairly and transparently.

- **Energy efficiency.** Alongside ensuring sustainable sources of energy, improving energy efficiency is a vital component of Cambodia's transition towards a more sustainable and energy-independent society. While energy efficiency requires behavioral changes on the parts of individual consumers and businesses, there is more that the Royal Government can do to facilitate and encourage energy-efficient consumption.
- **Green buildings.** Globally, the development and maintenance of the built environment accounts for between 40% and 60% of greenhouse gas emissions. As such, to implement policies aimed at encouraging best environmental practices within the construction sector would have a major impact upon Cambodia's overall level of sustainability.

## 20. RENEWABLE ENERGIES

### *Support the competitiveness of sustainable biomass*

#### *Issue Description*

Biomass, in particular firewood, is the primary energy source in Cambodia (71% of total primary energy supply in 2009)<sup>20</sup>. Firewood and charcoal is used by up to 80% households for their daily cooking needs and also by industry for the generation of electricity and heat for their production processes.

Reflecting forecasted increases in overall national energy demands over the coming years, biomass consumption is expected to keep growing in Cambodia with an upward trend for households continuing until at least 2030<sup>21</sup>. Biomass gasification technologies are increasingly being adopted within industry to provide reliable energy at a lower price than the grid, while on a smaller scale they represent viable solutions for rural electrification in off-grid areas.

In this context, biomass represents a valuable resource of energy for Cambodia. However, the biomass sector in the country at present is mostly unregulated and rarely sustainable. Biomass sources for industry are not always known and traceable, while at the household level it is almost 100% firewood and charcoal sourced directly from Cambodia's forests in an uncontrolled manner.

Companies providing sustainable biomass solutions in Cambodia struggle to be price-competitive compared to the informal sector, which benefits from the extremely low price of firewood and charcoal derived from traditional unsustainable sourcing practices. The informal sector procures wood unsustainably from Cambodian forests, pays extremely low wages and sells its products in urban areas while evading any type of tax regime. This combination of advantages allows the informal biomass sector to sell wood and charcoal at lower prices than the formal sector which sources its material sustainably, complies with the Labor Law and pays all applicable taxes.

#### *Potential gains/concerns for Cambodia*

Support biomass providers who operate within the formal economy and use sustainable sources would be beneficial for Cambodia. Given the high proportion of the country's total energy consumption that is derived from biomass, making the sector more sustainable represents a huge opportunity to achieving the goals of long-term energy independence. Biomass represents a valuable source of renewable energy only if the biomass resources (forests, woods, plantations and agricultural/industrial biomass waste) are managed, harvested and used sustainably. Informal sourcing of biomass, if not managed, could come to represent a dramatic and irreversible threat for the country's valuable natural resources and its eco-system.

We request that the Royal Government builds upon the considerable work already done to further implement policies supporting the development of a sustainable and formalized biomass sector. In particular, we welcome the initiative of the Ministry of Mines and Energy and the Ministry of Economy and Finance who have exercised inter-ministerial cooperation and fostered a shared vision in order to provide a VAT exemption to EuroCham member Sustainable Green Fuel Enterprises on the basis of the demonstrated environmental and social benefits of the company's activity. We recommend continued monitoring of the consequences of this initiative and request the Royal Government to be open to expanding fiscal incentives to other companies within the biomass sector who can demonstrate how their operations contribute to the Royal Government's objectives.

The support and expansion of initiatives like this helps to reduce the price differential between the formal and informal sectors, enabling sustainable businesses to be more competitive and helping Cambodia transition towards more sustainable energy practices. Furthermore, it should be stressed that the adoption of this recommendation need not result in a net loss in tax revenues for the Royal Government. Indeed, the increased competitiveness achieved through VAT exemption would foster a formalization of the sector, whereby informal businesses could register as formal businesses as they no longer seek the benefit of evading VAT. The formalization, development and growth of the sustainable biomass sector would increase income from other applicable taxes (tax on profit, tax on salaries), which would be a large improvement on today's situation where the biomass sector is mostly comprised of informal companies that don't pay any taxes at all. Finally, fiscal incentives and a more formalized industry would be more likely to encourage greater levels of investment.

## *Recommendations*

- ✓ Assist sustainable biomass companies operating within the formal sector to be price competitive

## 20. RENEWABLE ENERGIES

### *Support the competitiveness of solar energy*

#### *Issue Description*

Solar power represents a source of energy that is complementary to the Royal Government's aforementioned commitments to provide reliable energy sources to its population, to promote sustainable energy and to transition towards a state of energy independence. Cambodia's territory receives strong Global Horizontal Irradiation (GHI) levels<sup>22</sup>, making solar energy a technically and commercially viable energy solution in much of the country. Solar energy can also help meeting the government's goals of reducing CO2 emissions.

There are two scenarios where solar energy can be a viable alternative to conventional power sources:

#### 1. Rural areas

Given Cambodia's high electricity costs and lack of distribution in rural areas, solar energy systems for residential homes in such areas provide long-term financial benefits for those who invest in them. It can prove more cost-effective than charging car batteries at costly diesel-powered generators, which for some rural households is at present their only possible source of electricity. However, these rural areas also tend to have the lowest levels of disposable income, which makes the initial investment in solar energy more challenging and presents a significant obstacle to the greater adoption of solar energy in Cambodia. One other big challenge in rural areas is low-quality solar home systems. There are many informal companies selling bad quality materials damaging the image of solar technologies. On top of this, these companies are not tax compliant and therefore create unfair competition to the compliant solar companies.

#### 2. Urban areas and industry

Likewise for the industrial sector, businesses will only invest in solar energy if they expect to receive a return on investment within a reasonable time period. For areas that do have access to the national grid, solar systems of any size are suitable to be connected to it. Unlike stand-alone systems, grid-connected systems do not require batteries and are therefore cheaper and more cost effective. A grid-connected system fitted with an 'inverter' (to convert DC- solar power into AC-power) enables the consumer to use electricity supplied by either the solar system or by the grid.

Solar energy can be generated every day of the year. At times, the energy generated by the solar energy system exceeds the electricity usage of the consumer. A good example would be a solar-equipped industrial factory that is closed on Sundays and national holidays – it generates the same amount of energy as working days but does not make use of it. At present, this surplus energy is simply lost, providing no benefit to the consumer nor to the national grid.

We would like to stress at this point that solar energy is complementary to and not in direct competition with other sources of energy that Cambodia is investing in. Indeed, solar energy playing a greater role within the mix of Cambodia's energy sources would provide considerable advantages to the Kingdom's energy infrastructure:

## *Potential gains/concerns for Cambodia*

- Cambodia is still heavily dependent on imported electricity to meet its energy demands. An increase in the proportion of Cambodia's energy consumption being derived from solar energy would help to reduce the need for foreign energy imports.
- There has in recent years been heavy investment in large-scale hydropower projects within Cambodia. Such projects are significantly less productive during the hot, dry season, which coincides with the time when solar energy sources are at their most productive.
- Solar energy sources are productive during the day-time which is when the national grid is coping with peak demand. Electricity becomes more expensive to generate during peak periods and, therefore, solar represents an attractive alternative to reduce the need for peak load generation capacity.
- Solar provides an independent source of energy that can help the Royal Government to meet its rural electrification targets in areas where it may not be economically viable to invest in the physical infrastructure needed to connect to the national grid. Extending the grid to a faraway village would cost the public sector thousands of dollars whereas a solar home system costs a fraction of this and can be paid for by the consumer.

In order for this important source of renewable energy to be successful in Cambodia, it must also be economically viable. This can be achieved through supportive government policies towards solar energy. We believe that it would be in the interests of the Royal Government to work alongside the private sector to enable fair competition between solar energy solutions and other energy sources. This would help to support the development of solar energy within Cambodia as part of a wider project of ensuring a suitable mix of energy sources to provide for the country's growing demand and making reliable sources of energy available to the entire population.

1. Support the development of the solar energy sector within Cambodia by permitting solar energy providers to apply for a VAT exemption if they can demonstrate significant contributions to the Royal Government's goals of sustainable energy generation and rural electrification. This would help to address the affordability issue for home energy systems in lower-income areas and would help the solar sector to be economically competitive vis-à-vis less sustainable forms of energy production. It will also be an incentive for informal players to become compliant.

## *Recommendations*

## 20. RENEWABLE ENERGIES

### *Support the competitiveness of solar energy (...continued)*

✓ Consider VAT exemptions and the introduction of a trial net-metering scheme to support the development of the solar industry in Cambodia

2. Consider introducing a pilot scheme in which solar companies can each apply for permission to register a limited number of clients for a net-metering scheme, subject to the following conditions:

- The proposal is that the Ministry of Mines and Energy, the Electricity Authority of Cambodia and the Electricité Du Cambodge (EDC) would allow individual consumers who have access to the national grid to install a solar energy system and to connect to the grid behind the main switchboard inside the customer's premises. This means that during periods where a consumer is not using all the electricity generated by its solar facilities, surplus electricity flows back into the grid. In exchange, the consumer is rewarded with a correlating reduction in their monthly electricity bill; they receive back the value of the energy that they have contributed to the system.
- The scheme would not require EDC to pay households for surplus energy generated. If the consumer provides more energy to the grid than they consume, the electricity supplier would benefit from this surplus electricity but would not have to pay the consumer. Where households supply more than they consume they may be required to nonetheless contribute a reduced fee to the EDC for maintenance and administrative fees.
- The proposal would not require (EDC) or any electricity supplier to invest in additional materials or infrastructure.

Net-metering has already been embraced in other ASEAN countries including Indonesia and Thailand, each of whom recognize the concept's potential to considerably reduce the return-on-investment period for solar energy systems. Exploring the introduction of net-metering schemes within Cambodia can make solar installations a far more attractive economic proposition which would increase the adoption of this sustainable energy source within the Kingdom.

## 20. RENEWABLE ENERGIES

### *Quality assurance for the solar energy sector*

While there is huge potential for solar energy in Cambodia, more could be done to help raise awareness and confidence in solar energy within the eyes of consumers. Many Cambodians are simply not aware of solar energy and the possible benefits it can provide to them, while others are aware of the technology but report low levels of trust based on bad experiences with low-quality products.

The creation of a quality assurance program for solar energy products is an important component addressing the dual obstacles of consumer awareness and consumer confidence. The Good Solar Initiative (GSI) is an accreditation and quality control scheme for solar products in Cambodia designed to provide an easy and effective way for consumers to differentiate between solar products of assured quality and those that do not come with such guarantees. Solar suppliers can apply to the program's implementer for their products to undergo technical assessment and, if found to be to the required standard, have them recognized as a quality-assured solar product that can use the Good Solar Initiative brand in its marketing. The program includes ongoing quality inspections in order to ensure that standards are maintained among suppliers using the Good Solar Initiative brand. In parallel, it works alongside local partners to implement awareness-raising activities to increase recognition of the brand as a recognized sign of high-quality solar products.

Only fully-registered and tax-compliant companies are eligible to apply for the GSI label. The GSI label is thus a guarantee of technical quality as well as responsible business practices.

The GSI initiative is supported by a donor project that is scheduled to run until 31st October 2018 and it is not clear at this point what will come of the Good Solar Initiative beyond this date, though there have already been some exploratory talks about the Royal Government eventually taking over the management of the GSI label.

The Good Solar Initiative is an asset to the Cambodian energy sector. It helps to lay the foundations for the growth of the solar energy sector and ensures that this growth will be conducted in a sustainable manner by companies providing high-quality products and adhering to responsible business practices. With no clear plan in place for the continued implementation of the Good Solar Initiative beyond October 2018, there is a risk that the benefits provided by the program could be lost at this time.

1. Officially recognize and endorse the Good Solar Initiative as a national quality assurance program for solar energy.
2. Work alongside the program's implementers to raise awareness of the Good Solar Initiative among the Cambodian population.
3. Work with donors and the program's implementers to create a transition plan under which the Royal Government would eventually assume responsibility for the implementation of the Good Solar Initiative scheme so as to ensure its long-term sustainability.

#### *Issue Description*

#### *Potential gains/concerns for Cambodia*

#### *Recommendations*

- ✓ Endorse the Good Solar Initiative as a national quality assurance program for solar energy and create a transition plan to eventually assume responsibility for management of the program

## 21. ENVIRONMENTAL IMPACT ASSESSMENT

### *Application of Environmental Impact Assessment legislation*

#### *Issue Description*

Given our commitment to encouraging responsible business practices amongst our members, EuroCham welcomes the ongoing efforts of the Royal Government to produce a clear and comprehensive Environmental Code. In particular, we recognize the need for legislation to mandate Environmental Impact Assessments on projects that could have adverse effects on the environment and local communities, ensuring their sustainable development. We will welcome the opportunity to draw upon the technical expertise held by our members to contribute to this important project.

There is much ambiguity over the legal frameworks surrounding Environmental Impact Assessment legislation. Chapter III of the Law on Environmental Protection and Natural Resource Management (1996) requires that an environmental impact assessment (EIA) be conducted for projects likely to have an impact on the environment, whether they are public or privately funded, and the 1999 Sub-Decree #72 ANRK.BK on Environment Impact Assessment Process provides guidance on the procedural steps required when conducting an EIA.

A new law specifically for Environmental Impact Assessment had been in the drafting phase since 2012, with multiple 'draft law' editions being made publically available online. It is our understanding that this Environmental Impact Assessment law has now been postponed and that EIA legislation will now be incorporated into a broader Environmental Code which may take around 2 years to implement.

EuroCham understands that when this Environmental Code comes into place, it will be applied not only to future development projects but also retroactively against any project that does not comply with its requirements<sup>23</sup>. With this in mind, our members are seeking guidance as to what action they can take now in order to meet the Royal Government's expectations and avoid costly corrective procedures upon implementation of the Environmental Code.

#### *Potential gains/concerns for Cambodia*

Given the repeated attempts to improve the EIA law and its future evolution through the Environmental Code, companies are unclear on what text they should follow for proposed and ongoing projects, as well as what the future expectations of the Royal Government for EIA are.

A lack of clarity over what the Royal Government requires from the private sector prevents businesses from knowing which actions they should take to achieve full compliance. This creates legal and regulatory risks for current and prospective investors which must be incorporated into their calculations when considering Cambodia as an investment destination compared to other countries.

#### *Recommendations*

- ✓ Provide clear and public guidance on how EIA legislation will be enforced until the Environmental Code or new EIA law is implemented

1. Provide clear and public guidance on how EIA legislation will be enforced until the Environmental Code and/or new EIA law are signed and implemented.
2. Provide a commitment to the private sector that any retrospective implementation of a new Environmental Code will include provisions for a transition period in which businesses will be afforded a reasonable period of time to take the necessary actions to become compliant prior to any punitive action.

## 21. ENVIRONMENTAL IMPACT ASSESSMENT

### *Limited competition amongst Environmental Impact Assessment consulting firms*

Within the latest available edition of the Draft Law on Environmental Impact Assessment<sup>24</sup>. Article 20 states that an EIA assessment report is only valid if “the report has been prepared by a legal entity to which [the Ministry of Environment] has granted accreditation as an EIA consulting firm”.

Subsequently, Article 21 states that “EIA Consulting Firms shall have Khmer nationality with the project team leader who is the consultant accredited by the [Ministry of Environment]”.

Accordingly, the proposed law requires any development project to conduct an EIA through an accredited company which must be of Khmer nationality. Given the proactive efforts by our members to be compliant with future EIA legislation, many are currently acting in compliance with this provision.

However, the provision is proving to be problematic; it creates an effective monopoly for the small pool of accredited companies, allowing them to charge exorbitant prices in some cases. Additionally, some of the accredited companies do not necessarily conduct EIAs according to international standards. In some instances we have received reports of ambiguity over the fees payable to accredited companies for their services and difficulties in obtaining documentation relating to payments made.

This issue creates additional costs and administrative burden for investors and has a negative impact upon Cambodia’s attractiveness as an investment destination.

Many of our members require EIAs from international consultants for their own internal governance procedures. For these companies, the legally-required EIAs by accredited consulting companies in Cambodia represent additional costs and little additional value.

Furthermore, non-transparent practices conducted by some accredited EIA consultancies, made possible by their effective monopoly, add unbudgeted costs to investment projects and creates difficulty in terms of governance when reporting to foreign direct investors.

Remove the nationality requirement for EIA consultancies from future EIA legislation and consider accreditation applications based only upon the competencies of the applicant company. Encourage accreditation applications from a greater number of consultancies in order to encourage fair competition among service providers.

#### *Issue Description*

#### *Potential gains/concerns for Cambodia*

#### *Recommendations*

- ✓ Remove the nationality requirement for EIA consultancies from future EIA legislation

## 22. ENERGY EFFICIENCY

### *Labeling of products*

#### *Issue Description*

At the present time, there is no requirement for products marketed and sold in Cambodia to carry any labeling denoting their energy efficiency. Some companies voluntarily display information about their products' energy efficiency levels based on frameworks from other countries, though many products sold in Cambodia display no such information. Accordingly, it is difficult for consumers to distinguish between energy-efficient products and less energy-efficient products. Energy-efficient products often represent more sophisticated technologies which come at a higher retail price, which can be difficult to justify to consumers who do not have sufficient information available about the efficiency of the product and how it compares to other models. Similarly, there are no requirements to display energy efficiency information for industrial products such as heavy machinery.

#### *Potential gains/concerns for Cambodia*

Encouraging consumers and industrial operators to invest in energy efficient products will be of utmost importance in realizing Cambodia's energy efficiency objectives as specified in the Climate Change Strategic Plan 2013-2024 amongst other strategic policy documents. Specifically this recommendation relates to Strategic Objective 4, to promote low-carbon planning and technologies to support sustainable development.

Furthermore, the increased adoption of energy efficient products would help to reduce Cambodia's reliance upon foreign fuel imports as part of a transition towards energy dependence.

#### *Recommendations*

Create a technical working group to begin conceptualizing a mandatory energy efficiency labeling system for certain products sold in Cambodia. Study regulation from other markets such as the European Commission's Energy Labeling Directive to inform the group's designs.

- ✓ Work towards a mandatory energy efficiency labeling system for certain products sold in Cambodia

## 22. ENERGY EFFICIENCY

### *Awareness of energy efficiency*

Awareness about energy efficiency amongst the private sector could be enhanced. Many businesses could not only reduce the environmental impact of their operations but make considerable savings by transitioning towards more energy efficiency equipment and processes, though awareness of such possibilities is sometimes low.

Increasing energy efficiency levels within industry is an important element in realizing Cambodia's energy efficiency objectives outlined in the Climate Change Strategic Plan 2013-2024 (along with other strategic policy documents). Specifically, this recommendation relates to Strategic Objective 5, to improve capacities, knowledge and awareness for climate change responses.

In addition to the aforementioned contribution to Cambodia's energy independence, the cost savings that can be realized by the introduction of energy efficient equipment and processes in industry will help to make Cambodian businesses more internationally competitive and thus have a positive impact upon economic growth.

Consider introducing a 'Green Industry Award' to recognize businesses who have demonstrated excellent practices in energy efficiency. The purpose would be to raise awareness of energy efficiency best practices and provide opportunity for businesses to learn about the energy efficiency options available to them. The format could be similar to the "Samdech Techo Hun Sen Prime Minister Eco-Business Awards for Tourism"

#### *Issue Description*

#### *Potential gains/concerns for Cambodia*

#### *Recommendations*

- ✓ Consider introducing a 'Green Industry Award' to recognize businesses who have demonstrated excellent practices in energy efficiency

## 23. GREEN BUILDINGS

### *Considering the creation of a Green Building Council*

#### *Issue Description*

Cambodia is currently experiencing a construction boom and can expect heavy investment in its built environment over the next 10 to 15 years. For this reason, it is crucial that the Royal Government sets a policy direction that encourages best practices in architecture and construction in order to ensure the long-term sustainability of the construction industry and Cambodia's urban areas. Indeed, the Kingdom's relatively low levels of urbanization compared to other ASEAN countries provides an opportunity to bypass some of the urban planning problems encountered elsewhere, to take a leadership role and become a renowned model within ASEAN and the international community for sustainable building solutions.

Cambodia remains one of the last ASEAN countries to lack official guidelines and regulations on sustainable buildings. The creation of a national accreditation body for sustainable buildings to serve as the authority that gives ratings and awards based on the sustainable credentials of a building would be a major step in encouraging and promoting greater adoption of sustainable building practices.

#### *Potential gains/concerns for Cambodia*

'Green Buildings' are sometimes perceived as being considerably more expensive than regular construction projects but this is not necessarily the case. EuroCham's membership includes a number of the leading architectural design companies offering simple and cost-effective sustainable building solutions appropriate to the Cambodian environment. These solutions don't need to be 'high-tech' – they can be as simple as considering the positioning of the building in relation to the trajectory of the sun throughout the day or positioning openings so as to release heat and reduce the need for air-conditioning in this tropical climate

Encouraging sustainable building practices would offer the Kingdom multiple benefits:

- **Quality of investors.** Green buildings provide greater financial benefits over an extended investment period. In addition to direct cost savings from reduced energy consumption, green buildings are considerably more likely to retain their asset value as investors and tenants become more educated and concerned by sustainability credentials and energy efficiency. Therefore, national policies that foster and require sustainable building practices encourage the medium- and long-term investors that Cambodia needs for its continued economic growth.
- **Productivity and competitiveness.** Multiple studies<sup>25</sup> have found workers within sustainable buildings to be more productive and require fewer sick leaves due to their more comfortable working environment, which enhances competitiveness and benefits the national economy.
- **Supporting industries.** Wherever possible, green buildings make use of locally-sourced materials and therefore support the development of supporting industries for the construction sector within Cambodia.

- **Environmental impact.** Best practices in building and construction would make a major contribution to the Royal Government’s GHG mitigation targets – globally, the building sector represents between 40% and 60% of most countries’ GHG emissions.
- **Resource sufficiency.** Enhanced energy efficiency helps to reduce Cambodia’s dependence on foreign fuel imports and mitigates urban development challenges such as overconsumption of water supplies.

Create a technical working group, potentially chaired by the National Council for Sustainable Development and supported by representatives from the private sector with relevant expertise, to begin exploring the creation of a Cambodian Green Building Council and the criteria that it would use for its accreditations. These criteria would need to be based on common sense, reflecting local specificities and providing realistic goals for existing as well as future buildings.

We propose that the working group, once established, set itself the target of becoming a ‘prospective member’ of the World Green Building Council (<http://www.worldgbc.org/worldgbc/become-member/>) by 2017.

Furthermore, the working group’s expertise could be incorporated into longer-term national urban planning and other relevant projects such as the drafting of the Environmental Code and Environmentally Sustainable Cities initiatives. Integration of the group’s work into these important projects would help to maximize the benefits that green buildings can provide to the national economy.

## *Recommendations*

- ✓ Begin exploring the creation of a Cambodian Green Building Council

# HEALTHCARE

European healthcare brands are well-regarded in Cambodia, and European pharmaceuticals actually represent the largest single commodity that the EU exports to Cambodia (over €35 million in 2014). EuroCham Cambodia represents a number of pharmaceutical and medical equipment companies within the healthcare sector, and we therefore welcome the open and reform-minded approach of the Ministry of Health and seek to collaborate with the Ministry and other relevant public bodies to help facilitate continued growth of the healthcare sector in Cambodia. In particular, we welcome the fact that the Ministry is now considering the implementation of an online registration system for healthcare products. Mirroring the

modernization and automation initiatives of other public institutions such as the Ministry of Commerce and the General Department for Customs and Excise, the creation of an online product registration facility for healthcare products would significantly improve the ease of doing business within the sector. Through the EuroCham Healthcare Committee, we hope to contribute to the successful implementation of this initiative which we recognize represents a longer-term ambition currently in its early stages. Accordingly, within this chapter of the White Book, we seek to provide recommendations that could be implemented in the shorter-term to help to overcome some of the challenges that healthcare businesses operating in Cambodia are facing.

There are two significant issues featured prominently in our consultation with our membership. First, we emphasize the seriousness of the problem of parallel importing of pharmaceutical products, which is pervasive within Cambodia. The Kingdom has a good body of legislation when it comes to healthcare but low levels of enforcement can create safety risks for patients. We stress that such practices can create serious health risks for consumers – this is not simply an issue of intellectual property but a real concern over the quality and safety of pharmaceuticals being made available to Cambodian citizens. Accordingly, we wish to offer recommendations to the Royal Government that encourage higher levels of compliance within the healthcare industry, encouraging international

investment and protecting Cambodian citizens as well. Secondly, the problem of delayed product registrations and renewals can cause significant disruption to supply chains. Our recommendations on this subject suggest immediate solutions to the problem at hand but also propose streamlining the registration process itself to reduce the time taken to register and renew a product.

## 24. PARALLEL IMPORTS

### *Prevention of parallel imports of pharmaceuticals*

#### *Issue Description*

Cambodia has a process in place for the registration of pharmaceutical products which mandates detailed technical specifications of both the product and its packaging. Cambodia does not currently permit companies or individuals to hold the exclusive right to import any particular pharmaceutical product. However, according to the law, only products that match the specifications registered with the Ministry of Health can be imported into Cambodia.

Large quantities of parallel imports are openly on sale within some Cambodian pharmacies, which is indicative of a need for further implementation of the laws.

For purposes of clarity, parallel imports are to be differentiated from counterfeit imports. Whereas counterfeits are ‘fakes’ that falsely adopt the name and branding of a registered product, parallel imports may indeed originate from the authorized product manufacturer and meet all of the product specifications within the country of manufacture. However, they nonetheless pose health risks when transported by a secondary entity into Cambodia. Multinational pharmaceutical companies take climatic conditions into account when designing their packaging and regularly modify their packaging for specific countries so as to protect the product in that country. Cambodia has a tropical climate and many of its pharmacies are not climate-controlled, meaning that pharmaceutical products require adapted packaging so as to prevent them from spoiling in the heat. Parallel imports originating from Europe will have packaging appropriate for the European environment which may be inadequate and inappropriate for the Cambodian environment.

Additionally, products brought in to Cambodia by parallel importers can be spoilt due to incorrect treatment during transit. One member raised an example in which parallel importers were bringing in insulin bearing the company’s brand which proved to be of poor quality, resulting in health risks to consumers and damage to the brand’s reputation. An investigation found the insulin to have been transported to Cambodia under inappropriate climatic conditions - insulin needs to be ‘cold chain managed’ (kept in storage and distribution facilities designed to maintain a specific temperature range) to prevent against spoilage.

#### *Potential gains/concerns for Cambodia*

Our primary concern on this issue relates to safety rather than revenues. Indeed, in most cases of parallel importing the product manufacturer will have already registered the sale in another country and therefore does not incur any financial loss as a result of parallel importing. However, parallel imports represent a health risk to Cambodian citizens and residents as there are no means of assuring the quality of the product.

The average consumer cannot be expected to have the technical knowledge to determine whether or not a pharmaceutical product is spoiled or not, therefore responsibility has to fall upon regulators to provide quality assurance through effective management of imports.

In order to address the issue of parallel importing, we make the following recommendations:

## *Recommendations*

1. Provide customs officials simple access to the registered specifications for pharmaceutical products, including their packaging and artwork, so that they can more easily check for discrepancies between the registered specifications and any cargo being brought into Cambodia.
2. Ensure that any pharmaceutical product not matching the precise registered specifications be unable to obtain an import license from the Ministry of Health. The ministry's transition towards an electronic platform would facilitate more effective implementation.
3. Introduce a hotline that authorized pharmaceutical importers can call to report evidence of parallel importing and other quality concerns. Ensure that reports are investigated by the relevant authorities and that appropriate enforcement actions are taken to cease the unauthorized activity.
4. Conduct regular inspections on pharmacies through authorized and competent bodies and confiscate products that do not match registered specifications so as to encourage pharmacies to be more diligent in sourcing their products.

✓ Implement additional measures to prevent parallel importing of pharmaceutical products

## 25. REGISTRATIONS AND RENEWALS

### *Process for the obtaining of exceptional import licenses*

#### *Issue Description*

Products actively going through the renewals process are not automatically entitled to receive import licenses. Under normal circumstances, a product registration certificate is required in order to obtain an import license from the Ministry of Health. Consequently, when there are delays in the product registration process (which, as mentioned above, can take up to two years), companies are prevented from importing their product into Cambodia during this period.

The Ministry of Health has been helpful on this issue and has agreed to consider requests for exceptional import licenses on a case-by-case basis. Appreciating these efforts, our members would nonetheless benefit from a more formalized process through which they can apply for exceptional import licenses where a product registration has been delayed due to factors outside of the company's control.

#### *Potential gains/concerns for Cambodia*

Delays in product registration and renewal can prevent important and, in some cases, life-saving medicines and equipment from entering the country. This lowers the quality of healthcare available to Cambodian citizens and residents for two reasons: first, it prevents products benefiting from the most recent research and development from reaching Cambodia; second, it creates demand for counterfeit products. This also creates significant operational burdens for healthcare companies which reduces the Kingdom's attractiveness within this sector.

#### *Recommendations*

Create a formal application process through which healthcare companies in Cambodia can apply for exceptional import licenses for products that have an ongoing registration or renewal application being processed.

- ✓ Introduce a process for obtaining exceptional import licenses for products that have an ongoing registration or renewal application

To ensure the utility of this process, we recommend publishing guidelines limiting the scenarios in which products may be eligible for exceptional import licenses, such as where there is an urgent medical need to help the product reach patients or where a valid registration certificate can be provided from one of a list of pre-approved countries.

## 25. REGISTRATIONS AND RENEWALS

### *Requirements for laboratory testing*

Cambodia's processes for the registration of healthcare and pharmaceutical products are modeled upon the French system. While in principle this is a good system that should provide the necessary oversight and governance for healthcare products being consumed in Cambodia, in reality this system can create burdensome delays for product registration and renewals as Cambodia does not have the same facilities as those used in France. Consequently, the registration and renewals process is taking significantly longer than it should; our members report that renewing a product that should take six months is taking up to two years, and registering a new product regularly takes two years.

While recognizing and being fully in accordance with the need to ensure the quality of healthcare products being registered and imported into Cambodia, we believe that certain steps within the existing process could be removed or reduced in order to streamline the overall registration and renewals process.

Prolonged product registration and renewal processes make it more difficult for healthcare companies to do business in Cambodia and have a negative impact upon prospective investors' perceptions of Cambodia. More importantly, delays in product registration and renewal can prevent vital, life-saving medicines and equipment from entering the country.

Amongst our membership are a number of multinational companies operating within healthcare, all of whom adhere to global quality standards. Pharmaceutical and other healthcare products are not manufactured within Cambodia and any such product being imported into Cambodia will have already received laboratory testing within its country of origin. Where this is the case, the requirement to subject the product to laboratory testing within Cambodia can be seen as unnecessary. We understand that the Ministry sometimes accepts laboratory tests from certain countries (such as France) as evidence of product quality, but this is done on an ad-hoc basis. As such, we request the Ministry of Health to publish a list of countries or institutions from which laboratory tests of healthcare products can be accepted by the Ministry in lieu of laboratory testing within Cambodia.

Furthermore, we request that the Ministry consider removing the requirement for laboratory testing in cases of product renewal. Provided that no substantive changes have been made to the product, there is no reason that the quality or safety of the product should have changed since registration or the last renewal.

### *Issue Description*

### *Potential gains/concerns for Cambodia*

### *Recommendations*

- ✓ Publish a list of countries or institutions from which laboratory tests of healthcare products can be accepted in lieu of laboratory testing within Cambodia

## 25. REGISTRATIONS AND RENEWALS

### *Scheduling of registration and renewal committee sessions*

#### *Issue Description*

Decisions on product registration and renewal take place in Ministry of Health committee sessions. The committee receives all relevant documents from the applicant beforehand and reviews before making a decision. Our understanding is that the committee aims to meet four times a year but, at present time, there is no clear schedule for when registration and renewal committees are to be held. Our members are often unaware of when committee meetings are due to take place or only become aware of an upcoming meeting on short notice.

#### *Potential gains/concerns for Cambodia*

Greater visibility of the dates of registration and renewal committee sittings would enable healthcare companies to better coordinate their delivery of applicable documents which would help to reduce the aforementioned delays that are common in healthcare product registrations and renewals in Cambodia.

#### *Recommendations*

We request the Ministry of Health to publish a clear schedule of registration and renewal committee sittings on the Ministry of Health website.

- ✓ Publish a clear schedule of sittings of the Ministry of Health's registration and renewal committee

## 25. REGISTRATIONS AND RENEWALS

### *Categorization of medical equipment for registration purposes*

The procedures and documents required to register medical equipment in Cambodia depend upon the Ministry's categorization of the product. At present, some medical equipment distributors perceive a lack of clear regulations relating to the registering of medical equipment. The guidelines provided appear to be based upon multiple regulatory systems from other countries; some of these guidelines can overlap with one another and create ambiguity over exactly what procedures and documents are required to register the product in question.

This ambiguity contributes to the aforementioned delays in the registration process for healthcare products in Cambodia as companies are unable to determine what the Ministry's requirements are for a specific medical equipment product. To improve this situation would result in less administrative burden for both the Ministry and the private sector.

We respectfully request the Ministry of Health to define a clear list of product categories for medical equipment with details of the procedures and documents required for each. The list could be made available on the Ministry of Health website along with guidelines on how to clarify the categorization of a product where not immediately obvious.

EuroCham would be happy to facilitate consultation with the private sector to discuss technical matters related to the categorization of medical equipment.

#### *Issue Description*

#### *Potential gains/concerns for Cambodia*

#### *Recommendations*

- ✓ Define a clear list of product categories for medical equipment with details of the procedures and documents required for each

## 26. OVER-THE-COUNTER PRODUCTS

### *Classification of over-the-counter (OTC) products*

#### *Issue Description*

Cambodia maintains a list of pharmaceutical products that are permitted to be sold over-the-counter (OTC). Private companies are permitted to undertake marketing and promotional activities in relation to these products.

The list was last updated in 2009 and, since that time, a number of new pharmaceutical products have been created that are considered suitable for OTC sale in other countries. Pharmaceutical products not listed on the OTC list are considered as ethical drugs (only legally available with a valid doctor's prescription) and there are restrictions on what marketing activities can be conducted in relation to such products.

#### *Potential gains/concerns for Cambodia*

The OTC list currently being used in Cambodia is outdated and, consequently, places unnecessary limitations on marketing activities relating to products that are treated as OTC in other countries.

Pharmaceutical companies who act in accordance with Cambodia's regulations are therefore limited in their marketing activities for new products. Introduction of new pharmaceutical products onto the Cambodian marketplace is thus hindered, which has a negative impact on sales and tax revenues while denying the Cambodian public access to the latest pharmaceutical innovations.

#### *Recommendations*

We suggest that the Ministry of Health review and update the OTC list so it aligns with the classification systems of other ASEAN countries.

- ✓ Review and update the OTC list so as to align with the classification systems of other ASEAN countries

## 27. PUBLIC TENDERS

### *Eligibility for public tenders for medical equipment*

Until recently there were only a handful of medical equipment distributors within Cambodia. Today, a cursory glance at the Yellow Pages lists more than 150. There is concern that not all of these companies have the required technical expertise to provide aftermarket care on the medical equipment that they import. They are able to offer lower prices when competing for public tenders because they invest less in their facilities and human capacities but this means that they are then unable to maintain the equipment that they provide.

The selection of a medical equipment provider that cannot provide aftermarket care on its product is a wasteful use of public resources. When problems arise with the machinery and it needs repair or maintenance, the equipment will ultimately be rendered unusable if the equipment provider does not have the technical expertise to maintain its functionality.

Exclude companies that do not have the capacity to provide ongoing aftermarket care on medical equipment from public tenders. Bidders on public tenders should be required to employ technical staff within Cambodia.

#### *Issue Description*

#### *Potential gains/concerns for Cambodia*

#### *Recommendations*

- ✓ Exclude companies that do not have the capacity to provide ongoing aftermarket care on medical equipment from public tenders

## 28. PUBLIC-PRIVATE SECTORS COMMUNICATION

### *A formalized forum for public-private sector dialogue*

#### *Issue Description*

The private sector is seeking more opportunity to engage the Ministry of Health over ongoing and much-welcomed initiatives to reform regulatory processes and to improve implementation of existing laws and regulations.

As the Ministry of Health continues to implement a reform agenda and to oversee a formalization of the healthcare sector, our members have at times felt that reforms or new guidelines have been issued on short notice and without the supporting information required to help them to comply. To take one example, a Ministry of Health announcement in July 2015 reiterated that distributors of pharmaceutical drugs would face punishment if found to be delivering to unauthorized pharmacies. While fully recognizing the importance of effective regulation over pharmacies, some distributors encounter obstacles in ensuring their compliance with these regulations as there is no readily-available official list of authorized pharmacies. As such, it can be difficult to confirm which pharmacies are authorized or not – our members are now asking their distributors to collect copies of licenses from their customers but it can be difficult to confirm the authenticity of such documents. Therefore, healthcare businesses working with the best of intentions can struggle to be certain of their compliance, creating regulatory risk and administrative burden as they try to gather the necessary documentation.

Furthermore, members perceive a lack of clarity in certain parts of the registration and renewals process and in the interpretation of applicable laws and regulations. Indeed, some members have found that two public officials from the Ministry of Health may have a different understanding or interpretation of the guidelines, which results in ambiguity and a lack of security for companies seeking to be compliant.

#### *Potential gains/concerns for Cambodia*

A mutual effort between the public and private sector to improve communication over regulatory issues will help companies to be fully compliant with Cambodian laws. A more formalized forum through which healthcare businesses can discuss regulatory matters with the Ministry of Health and receive definite responses to their enquiries so as to clear up any areas of ambiguity would prove very useful, and would allow the Ministry to provide guidance that fully reflects the operational context within which regulations must be implemented. This would provide a greater sense of legal security for current and prospective investors.

Ambiguity over regulatory matters creates room for discretion on the part of public officials, which can in theory create opportunities for non-transparent practices. A more formalized forum through which public-private sector dialogue can take place would increase transparency for all parties.

To improve communication between the public and private sector we encourage the consideration of the following recommendations:

1. The creation of a formalized public-private sector forum for healthcare which could be modeled on the existing Government-Private Sector Working Groups.
2. The publication of all healthcare-related Prakas on the website of the Ministry of Health, if at all possible with official translations into English language.

## *Recommendations*

- ✓ Introduce a formalized public-private sector forum for healthcare and improve availability of legal information in English language on the Ministry of Health website

# REAL ESTATE *and* CONSTRUCTION

**R**eal estate and construction is Cambodia's most rapidly developing sector and is certainly Cambodia's most dynamic source of growth<sup>26</sup>; in 2015 there was 3 billion USD of investment in this sector accounting for two percentiles of national GDP growth. As the Kingdom transitions towards becoming a middle-income country it can expect a strong demand for new residential and commercial spaces and corresponding physical infrastructure. This will provide considerable opportunity for the real estate sector to contribute to Cambodia's economic growth, but these opportunities can only be realized with a greater level of regulatory oversight and leadership from the public sector. There are a number of remaining challenges within the industry which the Royal Government has recognized and already begun to address. EuroCham welcomes the opportunity to collaborate with the authorities on such matters,

particularly the Ministry of Land Management, Urban Planning and Construction with whom we signed a Memorandum of Understanding in July 2015 focusing on:

- Cadastral and real estate development;
- Land management and urban planning;
- Construction

Over the coming years we hope to continue our constructive dialogue with the Ministry and other stakeholders and provide legal and technical advice where welcome and feasible; It is our desire to see real estate and construction play a strong and healthy role in the Kingdom's development.

EuroCham's members include a number of the leading developers, service providers, and suppliers to the real estate and construction industry in Cambodia, all of whom contributed

their expertise to the three subject areas covered by the Memorandum of Understanding in this White Book chapter. Within cadastral and real estate development, the most pressing concern is the need for higher levels of fiscal regulation to prevent speculative practices by both developers and homeowners. Furthermore, reforms to the freehold strata process could provide considerable benefits in terms of both efficiency and, through formalization of the titling system, to facilitate increased tax collection. Finally, for this section we consider the need for an officially-endorsed method for describing building measurements in Cambodia, which to date has been a source of confusion for prospective tenants.

Within land management and urban planning we are currently coordinating the provision of legal and technical support through our Real Estate and Construction sectorial committee and

we encourage the Royal Government to push forward on its coastal development strategy by beginning to consider embarking upon a model project implemented in compliance with the proposed new regulatory framework.

For the construction sector, the Royal Government is in the process of drafting a Construction Law that is intended to address the existing safety and quality-related issues within the field. We seek to support this initiative to ensure that the Law both provides adequate regulatory oversight and avoids creating too many obstacles to doing business. Furthermore, we highlight the need for shorter-term fire safety measures in the interests of public safety.

## 29. CADASTRAL AND REAL ESTATE DEVELOPMENT

### *Fiscal controls during project development*

#### *Issue Description*

At present in Cambodia there are minimal provisions for fiscal controls on property developers. Consequently, there are a number of developers undertaking high-risk speculative projects.

In order to minimize financial risks with the real estate and construction sector, many countries have minimum capital requirements that must be met before a construction permit will be issued on a project. The developer must be able to demonstrate that it holds capital equivalent to a certain percentage of the value of the project. Such provisions do increase the cost of embarking on a project but prevent developers from beginning projects that are financially dependent upon pre-sales money—such projects are at higher risk of running out of money prior to completion.

#### *Potential gains/concerns for Cambodia*

Developers undertaking projects without sufficient starting capital represent a major risk to the Cambodian real estate market and by extension, the entire national economy. If one project were to financially collapse prior to completion, this would be likely to affect confidence in the market and have a knock-on effect in which pre-sales for other projects would decline or withdraw. If this were to occur, it could trigger a ‘domino effect’ on the Cambodian real estate sector and lead to a market crash.

Accordingly, it is within the interests of the Royal Government and of all stakeholders with interests in the sustainable growth of the Cambodian economy to introduce stronger fiscal controls to regulate development projects.

#### *Recommendations*

We recommend that the Royal Government further develop fiscal controls within the real estate and construction sector so as to set a minimum capital requirement for development projects and define stages at which funds can be released into projects.

- ✓ Define a set of fiscal controls during project development

In setting such regulations it is beneficial to balance the need for regulatory oversight with the desire for investment-friendly government policy. As such, we recommend consultation with the private sector in order to gather relevant data and information so as to set the most appropriate thresholds; Cambodia can certainly continue having free flows of investment money, improve its ease of doing business while simultaneously also having effective regulatory controls.

## 29. CADASTRAL AND REAL ESTATE DEVELOPMENT

### *Freehold strata titles application process*

A large proportion of strata titles (properties that are not on the ground floor) are not being registered with the cadastral office of the Ministry of Land Management, Urban Planning and Construction. While there is a clearly-defined process for obtaining freehold strata titles from the Ministry, a large majority of purchasers are not currently going through the process of obtaining a formal strata title from the Ministry.

Under the today's system, when construction is at least 80% finished and 100% payment has been made to the developer, the developer should issue a 'sales purchase agreement' to the buyer. It is then the responsibility of the buyer to go through the certificate of ownership application process with the Ministry's cadastral offices. In practice, many buyers are unaware of these processes and do not go through the necessary steps. This is particularly true for foreign investors, who are predicted to account for 70% of purchases of the approximately 14,000 new condominiums being built in Phnom Penh by 2018.

Where purchasers have not been through the certificate of ownership application process, buyers retain the 'sales purchase agreement' from the developer as their supposed proof of ownership and may even sell the condominium to a second owner by transferring this document to their name. However, under such practices their ownership of the condominium is not legally protected—without a certificate of ownership from the Ministry, the condominium remains technically under the 'master plan' of the developer which could be transferred to a creditor if the developer were to go bankrupt.

While recognizing that developers and investors should be following existing processes, the status quo creates additional risk to the Cambodian real estate market. If one developer were to go bankrupt and, as per the scenario above, a 'master plan' were transferred to a creditor, this would have a major impact on investor confidence and have a negative impact upon the market.

Furthermore, whereby 'titles' are being held outside of formal processes, the Royal Government is being denied the opportunity to levy property transfer taxes on the sale of these properties.

As such, taking measures to improve compliance with formal processes for certificates of ownership will reduce financial risks and contribute to the Royal Government's ongoing efforts to enhance tax revenue collection.

To improve compliance relating to the application process for freehold strata titles, we suggest that obligation to apply for such titles be placed upon developers. We believe that application process could be streamlined by placing a trigger at a certain point of a project's development (e.g. phase of completion or number of sales) that requires the developer to bring sales purchase agreements with complete floor plans to the Ministry's cadastral office for conversion into certificates of ownership and handing to buyers. Such a process would enable faster processing of multiple strata title applications and would make it easier to monitor compliance levels.

### *Issue Description*

### *Potential gains/concerns for Cambodia*

### *Recommendations*

- ✓ Place an obligation upon developers to apply for freehold strata titles on behalf of property purchasers

## 29. CADASTRAL AND REAL ESTATE DEVELOPMENT

### *Limiting financial risks caused by speculative property investment*

#### *Issue Description*

There is presently very little information about the extent of the speculative property investment problem within Cambodia. This lack of information is partly due to the lack of compliance with certificate of ownership application processes as described above. This being the case, the Ministry of Economy and Finance has already voiced concerns about the potential for such behaviors to create price bubbles within the Cambodian real estate sector and the feedback we have received from our members echoes this concern.

#### *Potential gains/concerns for Cambodia*

Short-term speculation is bad for the market as it artificially inflates demand and makes the market seem stronger than it is. Where a point comes that the system collapses, people are left with bad credit, representing a risk to the entire national economy.

A speculative market creates volatility whereas a transition towards more of an owner-occupied market would provide greater levels of stability within the sector.

#### *Recommendations*

We recommend that the Royal Government introduce financial controls in order to limit the speculative buying of property within Cambodia. We suggest consultation with the private sector to deliberate upon the most effective means of control—constraints on when a property can be resold or additional taxation on properties resold within a certain time period could help to discourage speculative buying. However, these regulatory instruments would only prove effective if coupled with an enhancement of compliance within the titling system (see above).

- ✓ Introduce financial controls that limit the speculative buying of property within Cambodia

## 29. CADASTRAL AND REAL ESTATE DEVELOPMENT

### *Standardized measurements*

At present there is no standardized way of describing building measurements in Cambodia and there can be considerable variation in the methods used to present information about residential and commercial properties. For example, some developers or letting agents include communal areas such as elevator shafts, shared hallways or parking spaces in describing floor areas measurements. It can be difficult to ascertain which method has been used to make measurements on any given property, which can lead to confusion, making it hard for individuals or businesses to accurately compare space and for real estate service providers to give confident advice to their clients.

In many other countries a regulatory body defines a measurements standard applicable to all properties.

A lack of standardized measurements can create confusion and, in the worst case, provide opportunities for misleading practices. It is ultimately consumers who lose out from this ambiguity, which can affect confidence in the market. Options for buying or renting property is one of the major considerations for foreign investors and a bad experience within the real estate market can create bad sentiment and affect perceptions of Cambodia's overall investment environment.

An official prescription of a universal standard of measurement would foster wider adoption of one particular method and help to improve transparency within the Cambodian real estate market.

While it will be for the Royal Government to decide which method of measurement is most appropriate for Cambodia, it may be worth consulting with the International Property Measurement Standards Coalition (IPMSC), an international group of professional and not-for-profit organizations working together to develop and embed a single property measurement standard. Information about this initiative can be found at <http://ipmsc.org/>.

#### *Issue Description*

#### *Potential gains/concerns for Cambodia*

#### *Recommendations*

- ✓ Officially prescribe of a universal standard of measurement

## 30. LAND MANAGEMENT AND URBAN PLANNING

### *Coordinating public and private investment in coastal development*

#### *Issue Description*

The Royal Government recognizes the social and economic benefits that could be realized through effective development projects in the four coastal provinces of Kep, Kampot, Sihanoukville and Koh Kong. However, for these opportunities to be realized, there is a need for a supporting body of legislation and regulation relating to coastal development.

At present, the legal framework for development projects is based on a 1997 Sub-Decree that describes the type of construction projects that require construction permits from the Ministry of Land Management, Urban Planning and Construction or provincial or municipal authorities. It also provides instruction on the information that must be provided when applying for a permit. The Sub-Decree was issued at a time when Cambodia was at a lower level of economic development; there was no realistic prospect of the type of large-scale construction projects that developers and investors are now interested in. Accordingly, laws need to be reviewed and updated to meet today's requirements.

Public and private investment could be better coordinated to ensure mutual benefit and more effective development of designated areas. This would require the Royal Government to take more of a leadership role, setting a 'master plan' of what type of projects it would like to see developed and what infrastructure would need to be built to support these projects. An incentives structure could then be deployed that encourages private sector implementation of the master plan rewarding investors in private projects with tax concessions and other benefits in exchange for their participation in the development of public infrastructure within the designated area.

For this to be realized, there is a need for a more effective forum through which developers can understand the development priorities of the Royal Government, as well as legal tools to regulate the bidding process and define the terms and conditions of any public-private partnership. Such a framework would provide the government oversight over development projects and the capacity to ensure that private sector partners adhere to their public infrastructure commitments, while giving investors sufficient guarantees so as to feel secure in their investment. The lack of such a legal framework has proven to be a deterrent to developers considering major development projects within Cambodia.

EuroCham, through our Real Estate and Construction sectorial committee and based upon the terms of our Memorandum of Understanding with the Ministry, is currently providing legal and technical support to the National Committee for Land Management and Urban Planning and the National Committee for Management and Development of Cambodian Coastal Areas in the elaboration of a legal framework for coastal development. Such a framework is intended to facilitate the development and provision of services to dedicated 'development areas', serving as an instrument through which public-sector planning can be aligned with implementation by the private sector. We welcome the Royal Government's recognition of the importance of this project and its praxis-orientated approach to the development of such a legal foundation.

Developers (and just as importantly, major international banks) perceive too much ambiguity within the current legal framework for development projects within Cambodia. For example, a development project built on state-owned land with a long-term lease has no real guarantees on the land and it is not entirely clear who owns the project. This reduces the amount of Foreign Direct Investment into Cambodian coastal development since banks perceive too much legal and regulatory risk and are unwilling to provide financing to developers. Whereby investors are unable to obtain financing from such sources, it is much more difficult to find suitable private sector partners to participate in infrastructure development.

Creating legislation to facilitate coastal development as well as creating public-private partnerships in such projects will provide significant benefits to the economy—not only will these areas see higher levels of investment, but ensuring coordinated development projects also maximizes the benefit to the local area.

Furthermore, a more coordinated approach to coastal development will enhance the offerings of the Cambodian tourism and hospitality sectors in terms of quality, diversity, and capacity. This would help to create new tourism areas (at present, few of Cambodia’s beautiful coastal islands have seen much development), boost national tourism figures, and encourage longer visitor stays in Cambodia beyond Siem Reap. Being able to offer higher-quality hospitality options is also an opportunity to attract more affluent visitors and increase the average spend per tourist.

As the Royal Government continues researching how to best legislate coastal development, EuroCham would like to suggest that consideration be given to a ‘model project’ in which a designated area of land is developed according to international best-practice regulations. This pilot program would demonstrate that Cambodia can propose and oversee the implementation of projects to international standards, and would create opportunity to showcase to prospective investors that coastal development under international standards is a viable possibility within Cambodia.

The advantage of such a project is that it doesn’t require immediate legislative changes—the regulatory standards defining the roles of the stakeholders at each stage of the project, along with other standards and requirements can be embedded into binding contracts between public authorities and private sector developers. EuroCham will be happy to assist in developing the bidding process for such projects and defining the deliverables that private sector partners must meet to be eligible for incentives like tax concessions. Upon the project’s completion, legislative and regulatory bodies will have a real-world project to analyze, allowing the lessons learned to shape a future coastal development legal framework.

## *Potential gains/concerns for Cambodia*

## *Recommendations*

- ✓ Consider permitting a ‘model project’ to showcase to prospective investors that coastal development under international standards is a viable possibility within Cambodia

## 31. CONSTRUCTION

### *Ensuring a practical set of building standards*

#### *Issue Description*

At present, there are few local safety standards within the construction sector. While the developers of large construction projects will often voluntarily adhere to an international set of standards, it is not uncommon for developers to cut corners in pursuit of higher profit margins on smaller projects. As a result of poor construction standards, there have been a number of fatalities over recent years.

The Royal Government is currently in the process of drafting a Construction Law which will incorporate a Building Code setting safety and quality standards for construction projects. EuroCham welcomes this initiative and, based upon our Memorandum of Understanding with the Ministry of Land Management and Urban Planning and Construction, seeks to assist in the development of this Code through the provision of legal and technical expertise. In particular, we wish to help facilitate dialogue between the Royal Government and the private sector to ensure that the new standards will be robust yet also practical so as not to deter investment.

There is a need to further consider how to effectively implement the Code upon its completion. To monitor for compliance will require a body of trained staff who can independently check and verify the implementation of building standards on construction projects. In practice it can be challenging for government to develop the capacity to implement such checks, and governments in some other countries opt to authorize independent certification bodies from the private sector to carry out this task.

#### *Potential gains/concerns for Cambodia*

The Royal Government clearly understands the importance of introducing an effective Building Code to minimizing safety risks, protecting people in Cambodia, and encouraging investor confidence; Prime Minister Hun Sen has even publically commented on the risks that lax building standards can pose to the Cambodian real estate sector's growth and sustainability.

In terms of the content of the standards, due consideration needs to be given to how standards compare to those in other countries—to create a set of standards unfamiliar to investors would create additional adaption and certification costs and potentially discourage foreign investment. Conversely, a robust yet practical set of building standards would increase investor confidence without creating too many burdensome costs.

Effective implementation is key to ensuring the success of the Building Code and to enhancing investors' perceptions of fair competition within Cambodia.

1. Base the Building Code upon an existing set of international standards that is familiar to current and prospective investors. From this base, adaptations can be made to better suit the specificities of the Cambodia context. For example, whereas a European standard of roof strength needs to be able to withstand heavy snowfall, this would be unnecessary in Cambodia. However, there may be other hazards to consider that are not accounted for in the base set of standards. The end product of this process will be a ‘Cambodian standard’ but we recommend that this standard is congruent with existing international standards.
2. We suggest consultation with the private sector to determine what would be the most effective method of implementation of the new building code. The authorization of an independent certification body from the private sector may be one option to consider.
3. To assist in implementation, consider including within the Building Code a requirement for all development projects to prominently display a signpost that lists the construction companies working on the project. This serves to increase transparency and enables appropriate regulatory bodies to ensure only licensed and certified companies are operating on a construction project.

## *Recommendations*

- ✓ Consult with the private sector to ensure a practical set of building standards

## 31. CONSTRUCTION

### *Short-term measures to address fire safety*

#### *Issue Description*

The Cambodia Fire Prevention Law, passed in 2013, lacks detailed regulations and compliance mechanisms. While recognizing that the aforementioned Building Code will include more specific provisions relating to fire safety, we are also aware that the Building Code is unlikely to be fully implemented before 2018. Given a number of recent fire-related tragedies in Cambodia, we believe it important to take measures addressing fire safety as quickly as possible while awaiting the Building Code.

#### *Potential gains/concerns for Cambodia*

Delaying the Building Code's fire safety provisions increases the probability of tragedies taking place in the years leading up to its implementation. In addition to the pain and suffering caused, such incidents have negative economic consequences by affecting investor confidence in Cambodia.

#### *Recommendations*

Immediately identify a list of the most vulnerable buildings for an independent risk assessment. The priority should be to target buildings affecting the greatest number of people if a fire were to occur (including public structures like markets). Upon completion of the independent risk assessment, require the implementation of the assessment's recommendations within the applicable buildings.

- ✓ Implement short-term measures to address fire safety prior to the passing of the Building Code



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# Acronyms

<b>ACCSQ-APWG</b>	<i>ASEAN Consultative Committee for Standards and Quality Automotive Product Working Group</i>
<b>ASYCUDA</b>	<i>Automated System for Customs Data</i>
<b>CAIF</b>	<i>Cambodian Automotive Industry Federation</i>
<b>CBA</b> s	<i>Collective Bargaining Agreements</i>
<b>CDC</b>	<i>Council for the Development of Cambodia</i>
<b>CMIT</b>	<i>Cai Mep International Terminal</i>
<b>EDC</b>	<i>Electricité Du Cambodge</i>
<b>EIA</b>	<i>Environmental Impact Assessment</i>
<b>GDCE</b>	<i>General Department of Customs and Excise</i>
<b>GDP</b>	<i>Gross Domestic Products</i>
<b>GDT</b>	<i>General Department of Taxation</i>
<b>GHG</b>	<i>Green House Gas</i>
<b>GHI</b>	<i>Global Horizontal Irradiation</i>
<b>G-PSF</b>	<i>Government-Private Sector Forum</i>
<b>GSI</b>	<i>Good Solar Initiative</i>
<b>ICTF</b>	<i>Information and Communication Technology Federation</i>
<b>IPMSC</b>	<i>International Property Measurement Standards Coalition</i>
<b>IPR</b>	<i>Intellectual Property Rights</i>
<b>KAMSAB</b>	<i>Kampuchea Shipping Agency and Brokers</i>
<b>LO/LO</b>	<i>Lift-On Lift-Off</i>
<b>MRA</b>	<i>Mutual Recognition Agreements</i>
<b>NSSF</b>	<i>National Social Security Fund</i>
<b>NTR</b>	<i>National Trade Repository</i>
<b>OTC</b>	<i>Over-the-Counter</i>
<b>QIP</b>	<i>Qualified Investment Project</i>
<b>QTSC</b>	<i>Quang Trung Software City</i>
<b>SEZ</b>	<i>Special Economic Zone</i>
<b>Trade SWAp</b>	<i>Trade Sector Wide Approach</i>
<b>USO</b>	<i>Universal Service Obligation</i>
<b>VAMA</b>	<i>Vietnam Automobile Manufacturers' Association</i>
<b>VAT</b>	<i>Value Added Tax</i>
<b>VIN</b>	<i>Vehicle Identification Number</i>

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